INJUSTICE

OF THE

LAW OF SUCCESSION

TO

THE REAL PROPERTY

OF

INTESTATES.

BY

P. J. LOCKE KING, M.P.

"Better is a little with *justice* than great revenues without right."

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PREFACE TO THE THIRD EDITION.

It is most gratifying to me to find that public attention is at length aroused to the Injustice of the Law of Succession to Real Property. Many persons, whose opinions were formerly in favour of the law as it now stands, have, in consequence of perusing these few pages, entirely changed those opinions—they admit freely, that they never till now understood the subject, or had bestowed a serious thought upon it.

Others, I rejoice to say, have become so fully impressed with the crying injustice of the law, that they have lost no time in making their wills, having erroneously imagined before, that in the case of there being no will, the law would do justly by them and their children. They were not in the least aware of the unjust distinction the law makes between land and moveables, in other words, between one child and another.

It may perhaps be felt by some, that it would have been better if this question had not been taken up by a younger son; in this I quite agree; as, however, no eldest son has come forward, which I much regret, perhaps I may not be considered altogether unfit for the task, seeing that I am a disinterested party and can myself gain nothing

by any alteration of the law. I am one of those more favoured younger children, who are not victims; I owe my own exception to the kind forethought of a beloved father, on whose rare excellence and worth it would ill become me to dwell.

My sole object is the amending of a law which I consider to be a disgrace to my country, neither creditable to those who knowingly profit by it, nor to those who persevere in supporting its continuance.

Jan. 1855.

INJUSTICE

OF

THE LAW OF SUCCESSION.

HAVING ascertained how very little the Bill which I introduced into the House of Commons to amend the Law of Succession to Real Property in cases of Intestacy is understood, I am induced to make a few remarks upon it. It is quite surprising that even the greater number of intelligent persons are totally unacquainted with the present state of the law; while the prejudices of the upper classes are deeply rooted in favour of it, without their having made themselves in the slightest degree acquainted with the subject. I am aware I have to contend with the opinions of those whose feelings are so strong, that they will not even take the trouble of looking into the question, and who finding it convenient to conclude that my proposal is dangerous, decline combating with any argument that can be adduced. I will not offend them by saying their opinions are formed after any serious or careful reflection, for a sort of instinct seems with them to have preceded reflection, and to have set it aside. Some grave statesmen have in their hasty

zeal to oppose me, gone the length of declaring that the change I propose would subvert our institutions and endanger the existence of the House of Lords. How frail a fabric must those venerable institutions be in their estimation! A little consideration will I am sure enable them to discover that they have allowed their prejudices to run away with their judgment; they must sooner or later be convinced of the mistake they have made in proclaiming that so just and moderate an alteration of the law could endanger those institutions.

If the measure is just, and no one has yet ventured for a moment to assert the contrary, they in other words proclaim that those institutions are upheld by injustice. The real fact is, they are embarking in a hopeless contest, they are endeavouring to support an unjust prejudice, and appear to imagine that by clamour, and by putting a misconstruction on the real object of this measure, they can swamp a just cause; for a time such a course may succeed, but justice must and will triumph in the end. "There is a time for all things: there may be a time even for justice. Fashions change: who knows but one day even justice may be in fashion."

If some men, without knowing it, allow themselves to call injustice to their assistance and shrink from the truth because it does not agree with conclusions they have arrived at, those, at all events, who are in high stations ought to recoil from such an

aid. It is still more imperative on the members of the legislature to shew, both openly and in practice, that justice and truth are what they fearlessly look up to and rely on. Justice, the great link which unites and binds men together in society, establishes and cements the relationships between man and man. The feeling that justice is done to all makes men love their country and inspires them with an enthusiasm for it, which is one of its surest safeguards.

Truth would, as John Locke has said, certainly do well enough, if she were left to shift for herself. "She seldom," in his language, "has received, and, I fear, never will receive much assistance from the power of great men, to whom she is but rarely known, and more rarely welcome."

I know well that the motives which guide the Legislature where prejudices are concerned, are too often of that nature that no considerations based on either justice or sound principles are allowed to prevail until they are forced over and over again upon its attention.

With the members of the Legislature selfish interest, whether private or public, ought never to be the sole measure of their justice. This class of interest is the oldest, as well as the greatest deceiver; it is the god of the little, as well as of the great world. It is this interest which has kept up and retained, as I shall hope to prove, our anomalous and most unjust laws of succession.

The present law of succession in cases of intestacy is full of gross anomalies; it is most just, and yet most unjust, for this simple reason, that there is no uniform and precise rule laid down for all classes of property. There is one law for personal property, and another, totally different, for landed property; for the land itself there does not exist one uniform rule. There is not only no uniformity, but every kind of variation, complication, and mystification, so great sometimes that lawyers themselves are perplexed. For instance freehold land, where there is no will, descends entirely to the eldest son. Leaseholds which in many instances have been granted for very long terms, for 1000 or even 10,000 years, are in all respects equal in value to freeholds, yet they descend as personal property, and as such are divided amongst the children.

A Peer may have the lease of a house in Belgrave Square for 99 years, while another person possesses a freehold house in St. James's Square. According to the present law, the house in Belgrave Square, being leasehold, is personal property; while the house in St. James's Square, a freehold, is real property. Their respective owners die without having made their wills, leaving children. In the one case, the house in Belgrave Square, the house belonging to the Peer, is divided equally among all his children; in the other case, the freehold in St. James's Square descends to the eldest son. This, certainly,

is an absurd anomaly, for the value of the leasehold, from the length of time the lease has to run, is equal, or very nearly equal, to that of the freehold.

Sometimes all the houses in a street are freehold, but the gardens and stables at the back of those houses are leasehold; here again, where the owner dies without a will, the house would descend to the heir at law, while the gardens and stables, part of the same property and essential to its enjoyment, but being personal property, would descend to the next of kin. Surely it would be better to apply one just law, founded on a sound and true principle, to all property, and thus get rid of a number of legal quibbles which always will be found where there is no leading principle of justice. I have never heard of any case where inconvenience has arisen out of the present law which treats leasehold as personal property, and yet the greater part of the houses in London are of this tenure, while I have repeatedly heard of the cruelties and unhappy family discomforts arising out of the present state of the law, which allows the eldest son to take the whole of the freehold. In copyholds where borough English prevails, the youngest son has the right to inherit, and excludes the eldest son. This is the custom in several manors. I myself know an instance where a copyhold of this kind was so intermixed with the freehold as to form a part of the pleasure-grounds belonging to the mansion; the younger brother claimed the copyhold, and

received an accommodation price for it, and was, as I have been informed, better off than his elder brother with the freehold mansion and the domain.

Lord Brougham, in his extraordinary speech in the House of Commons on Law Reform in 1828, speaking of the inconvenient differences in the tenures by which property is held, and the rules by which it is conveyed or transmitted in various districts of the country, says, "Is it fitting or consistent with reason, or indeed with justice, that "merely crossing the river or travelling a distance "of some miles in this neighbourhood, should "make so great an alteration in the law of real "property, as that, to the eastward of us, all the "sons inherit equally; to the westward, the youngest alone; and here, the eldest? But these rules "of the Common Law, of Gavelkind, and Borough "English are better known and operate within more "defined limits. What shall be said of the Customary Tenures in a thousand manors, all different "from the Common Law that regulates freehold "estates, most of them differing from each other? "Is it, I ask, fit that this multitude of laws, this "variety of codes, the relics of a barbarous age, "should be allowed to exist in a country subject to "the same general bonds of government? . . "..... In some manors, the eldest daughter succeeds to the exclusion of her sisters, as the "eldest daughter (in default of male heirs) succeeds "to the Crown of England; in other manors all

"the daughters succeed jointly, as co-partners, after "the manner of the Common Law. In some "manors, the wife has her dower, one-third of the "tenement, as in the case of freehold; in others, "she has for her '*free bench*,' one-half: and again "in some she takes the whole for life, to the exclu- "sion of the heir. The fines on death and aliena- "tion vary; the power and manner of entailing "and cutting off entails vary; the taking of heriots "and lord's services varies. There are as many or "more of these local laws than in France, in the "Pays de Coutúme, of which I have seen four hun- "dred enumerated, so as to make it the chief oppro- "brium of the old French law, that it differed in "every village. Is it right that such varieties of "custom should be allowed to have force in particu- "lar districts, contrary to the law of the land?"

The Bill I introduced, would, where there is no will, at once remove those unfair distinctions by placing all property on one footing, and by making one uniform rule. When a parent dies without a will, leaving all his property in the funds, his property being personal, is by the present law divided equally among all his children. If on the contrary he had invested the whole of it in freehold land, and died without having made a will or provision for his children, the heir-at-law would take the whole of it, and the rest of the family would be left entirely destitute. But supposing he had only agreed to invest the

whole of his property in a freehold estate, intending when he had completed the purchase, to make a provision for his children by will, and he died suddenly before he had either completed the purchase, or made a will, the heir would then call upon the personal estate to complete the purchase, and take the whole of the property simply because it was vested in a freehold estate. Here again something very like a robbery is committed, and by it the younger children are left destitute.

It would be difficult to make a will in cases of this kind, for before the completion of the purchase, the will could only be a hypothetical one.

But still, somehow or other, a will must be made by every father who does not wish to see his younger children deprived of all through the cruelty of an unjust law. To show what consequences may arise, I will here quote a passage from a letter written by Lord St. Leonards, when Sir Edward Sugden. He says, "A moment's reflection will show what "serious consequence may follow from a neglect "on your part; for suppose you purchase an estate "with the £50,000 in the funds, which you have "given by your will to your younger children and "which constitutes the bulk of your personal pro-"perty, and should neglect to devise the estate, the "money must go to pay for it, at the expence of your "younger children, who would be left nearly desti-"tute, whilst your eldest, to whom the estate would "descend, would have an overgrown fortune. Dis-

"tressing cases of this kind are continually hap-
"pening." Now, I ask, is it honourable in the Legislature, is it right to allow such a state of things to remain, and that petty dishonest quibbling should any longer cause the ruin of whole families?

It is a poor consolation to tell a plundered and suffering family that their parent ought to have made himself acquainted with the law. But it may with truth be said as regards the differences between real and personal property, the technicalities have been kept up almost for the purpose of preventing his knowing the law. Everything is done to prevent his knowing or understanding the law,—it is brought into such a state that it is impossible for him to know it, and yet in all imaginable ways he is persecuted for not knowing it.

When we do get to understand these cruel quibbles it is only from the suffering of others, and thus, at last, we acquire experience. Much in the same way as Bentham describes, "When a "man has a dog to teach he falls upon him and "beats him: the animal takes note in his own "mind of the circumstances in which he has been "beaten, and the intimation thus received becomes, "in the mind of the dog, a rule of common law. . "." . . . . Men are treated like dogs; they "are beaten without respite and without mercy; "and out of one man's beating another man is left "to derive instruction as he can."

Instances of hardship arising from this state of

things are, as I know, by no means uncommon. Here, for example, I may mention one of peculiar cruelty, the facts are correctly given to me by a former Member of the House of Commons—" A. B. was a dealer in provisions, &c., he had a wife, but no child—they were a most careful and industrious couple, and had amassed besides the stock in trade, furniture, &c., some 2500*l.* There was a nephew living who had been a great favourite with them, but on growing up he had become a thorough scamp. A. B. made a will in favour of his wife, who had in fact done as much to earn the property as he had. They were in the vale of years. At the time I speak of, there was a freehold little farm to be sold in the vicinity. The price was 3000*l.* A. B. had book debts, stock in trade, &c., and 2500*l.* in cash. He knew he could with a little temporary borrowing, compass the purchase and stock the farm—he signed the contract and paid the deposit. Somebody suggested that he must alter his will, or his nephew might succeed to the estate instead of his wife. The poor man said, 'it will be time enough to do that when the place is my own, I will make a new will that very day.' Alas, there was not time enough. He died suddenly before the purchase was completed. His poor wife as executrix, was compelled to complete the purchase, and what with the expenses of some litigation, every shilling, and every chair and stool went away from her, the nephew took the estate, and the woman lived on

charity." No one can justify a cruelty of this kind, and the only excuse I have heard made is, that such cases are of rare occurrence, and are therefore exceptional. I make bold to assert that they are of frequent occurrence; that under the present state of the law, they must occur whenever a parent is the possessor of freehold estate only, and dies leaving children without a settlement and without a will.

It really seems as if the law with regard to real property never operates, except to work an injustice and a wrong. It never operates except where there is no will or no settlement; where either exists the law is abrogated—where there is only one child, or where there are only daughters, the law coincides with the law which is in force as to personalty. This, I think, disposes of the argument, (false in fact and absurd in point of logic) that there are few cases of the kind; be they many or few, it is in them and in them only that the law operates; "Suppose," as another writer on this subject observes, "that in "99 cases out of a hundred the descent of real "property is already determined, can that, by pos- "sibility, be a reason for not making an equitable "law for the remaining case? Even on the sup- "position that an instance of the kind in question "happened only once in twenty years, it ought to "be properly provided for. The rarity of the oc- "currence would render the application and enforce- "ment of the law a matter of little trouble, but not

"supersede the necessity of having a just law to "apply when it might be wanted."

The law ought not to allow the possibility of such a case, particularly when it can be prevented by a simple method which cannot in any way interfere with any person's right, or privilege. No possibility of any case of cruelty or hardship could occur from the proposed amendment. Every person would be able to make a will as he does now, and give all entirely to one if he pleases.

The right of succession to property, like that of the right of possession of property, is established for the good of society. If the undisputed right to property secures its productiveness, the power of making a will, or a just right of succession where no will has been made, will cause that property to descend improved from the existing to the next generation.

Thus the same soil which scarcely feeds the existing population, may through a good system of laws be made capable of providing for the wants, the comforts, or even the luxuries of a far greater population in after years. Much depends upon these laws, for according to the manner in which property is inherited or distributed, will the mind of the family be trained and regulated. Society, the nation itself, forms its character from these family incidents. "There is that scattereth, and "yet increaseth; and there is that withholdeth "more than is meet, but it tendeth to poverty."

But, when some say that the cases of hardship which occur are so few that it is not worth while to alter the law, I most distinctly assert that with the middle classes they ae of frequent occurrence. I could ask why should a law which can act, whenever it does, only as an injustice and an oppression, be allowed to remain, even if the cases were few, and when it is not based upon any sound principle? I will now give another case quite to the point:—

"SIR,—Having experienced the injustice and cruelty of the Law of Primogeniture, and noticing your just remarks upon it, on introducing your Bill for its Repeal, and the alteration of the Law, I take leave to address you, and to give you an instance of it in the case of my own family.

"My father died suddenly, in the year 1826, leaving a widow and eleven children, (or rather ten children, a daughter having previously died leaving four children). His landed property cost between £14,000 and £15,000: his personal estate was sworn under £4,000, which was all absorbed by his bond and other debts. His children were four sons and seven daughters, the eldest son had long previously taken the name and fortune of his maternal grandfather, under his will, and was thereby handsomely provided for. By the intestacy of my father, my eldest brother succeeded to all the landed property. The personal estate being insufficient to pay the debts, which had chiefly been incurred to purchase some of the lands; the eldest son was thus enriched to the injury of his brothers and sisters. The ten brothers and sisters were, as regarded their father's property, left utterly penniless, and at the mercy of their eldest brother. My father left an inoperative will, whereby he evinced his intention to provide an annuity for his widow, otherwise provided for by her father; and to divide his property equally amongst all his children, giving the

option to his eldest son to take the real estate at its fair value otherwise to be sold, having bought it with the view of completing his eldest son's estate under his grandfather's will. I need hardly state what heartburnings and estrangements of feeling this untoward act of intestacy has occasioned. I give you this case as one in point, and illustrative of the cruelty and injustice of the Law of Primogeniture amongst the *middle classes*, and literally realizing your justly condemnatory remarks; but its repeal can work no benefit to me, nor repay the family wrongs inflicted.

"The repeal of the law will not interfere with the aristocracy, since their estates are preserved from one generation to another by wills and settlements, and the settlements limiting the succession. Were they to succeed to the inheritance by intestacy, it is feared, with many, it would soon be dissipated.

"I have no desire to parade my name or family grievances before the public, but a real case serves to illustrate a subject better than a hypothetical one; and I leave you to make what use of this statement you may, in your discretion, think fit, in support of the measure introduced.

"Apologising for the intrusion, and at such a length,

"I have the honor to be, Sir,

"Your very obedient humble Servant,

"_____"

"The Hon. P. J. Locke King, M.P.,
38, Dover Street, Piccadilly."

If the law had been such as I am now endeavouring to make it, all the children would have been provided for, instead of the one eldest son having everything being most disproportionately rich, and his ten younger brothers and sisters left pennyless. Had his property been personal or considered as personal, the father's wishes would have been complied with.

I will now give another case sent to me with the

view of urging me to persevere until I get the present law altered.

"Some short time ago, two bachelor brothers, died intestate at a very advanced age, within twenty hours of each other, leaving real estate to the amount of one thousand pounds yearly, and personalty about fifteen hundred pounds, with instructions often *verbally* expressed, that the whole real estate as well as personalty should be equally divided between their two nephews, John B —— and William B—— two brothers. In this equitable distribution of property laboriously acquired, there seemed no disposition to demur, until some few weeks after the decease of the uncles, when the elder brother John claimed the real estate as heir at law, and one half of the personalty.

"What are the results? an enmity which will never cease, until the grave covers it.

"P.S. I could furnish the real names, but it would answer no purpose. Other instances I could give, involving larger amounts if needed."

In this instance again there would never have been this "enmity which will never cease until the grave covers it," and which has been created solely in consequence of the present law. The proposed alteration would, as my friend Mr. Bouverie said, in supporting this Bill in the House of Commons, sweeten the bread of English families, and prevent that jarring discontent and ill feeling which are produced by the existing law.

Mr. Joshua Williams, in his work on personal property, says on this question :

"The distribution of personal estate on intestacy approaches far more nearly to the disposition which the deceased himself would probably have made, than the descent of real property, either at the common law or according to the custom of gavel-

kind. A person possessed only of small landed property usually devises it to trustees for sale, with full power to give receipts to purchasers, and directs the division of the produce by his trustees amongst his children in such shares as he may think just, with regard to the provision already made for any of them in his life-time. He does not leave his younger children to beggary in order that his whole property may devolve to his eldest son according to the course of the common law, a course pursued, as the author believes in no other civilized country in the world."

And again, still speaking of the small owners of landed property:

"If by any accident a man should die without making his will, it would seem to be the province of an equitable legislation to make such a disposition of his property as would in ordinary circumstances most nearly correspond with his intention."

No one I believe ventures to say that the present law with regard to personal property, is other than just, and just, only because where the parent has made no will, all his children are taken care of, and his property is divided amongst them. How then if we admit the justice of the law, where it forces a division and makes a provision for all, can we admit that a law is just or even expedient which robs all, which makes brothers and sisters beggars, which treats them all as illegitimate, in order to heap every thing upon one, and to acknowledge that one, and one only, has any lawful claim. A law which is the very opposite to that natural affection of parents, which forces them first to nurse and then to make a provision for their children; a law which is so cruel that every parent who has his pro-

perty in land, is actually compelled to make a will to undo the intended injustice of the law, unless he wishes all his children except one to starve.

I do not think the law ought to be of such a nature, as to force all parents, who have landed property, to make wills, for no other reason than that it operates so unjustly and cruelly to their children. Formerly even with respect to personal property persons felt obliged to make their wills, on account of the tyranny and oppression of the Ecclesiastical Courts. Mr. Hallam in his history of the Middle Ages remarks:

"The clergy failed not, above all, to inculcate upon the wealthy sinner, that no atonement could be so acceptable to heaven, as liberal presents to its earthly delegates. To die without allotting a portion of worldly wealth to pious uses was accounted almost like suicide, or a refusal of the last sacrament; and hence intestacy passed for a sort of fraud upon the church, which she punished by taking the administration of the deceased's effects into her own hands."

The common law at the present time in force, with regard to the descent of the landed property of those who die intestate, is so unprincipled, that intestacy might pass "for a sort of fraud," not upon the Church, but upon younger children. I have over and over again said, it is better for the parent who wishes to give all, or a greater portion, to one child, to do so by will, rather than that the law should give all to one, in the event of his making no will, and nothing to the rest. It is better that one child should, now and then, have to complain

of a questionable act done by a parent, than that a whole family should have to complain of the law of the land, because the parent has omitted to do an act of justice and affection by making his will, to counteract the intended injustice and harshness of the law. Parents may often have special and very proper reasons why they should give more to one child and less to another; they have the means of observing the different habits and characters of their children, and of judging of the different circumstances in which they are placed. Children who are not already provided for, have a sort of claim upon the property of their deceased parent.

The parent, no matter what his rank, has a solemn duty to perform towards society and towards his children, he is bound to endeavour to send them forth into that society good and virtuous, and, to say nothing of higher motives, it is incumbent upon him to see that his children, when he dies, are according to his means, comfortably, fairly, and honestly provided for.

"But if any provide not for his own, and specially for those of his own house, he hath denied the faith, and is worse than an infidel." What then can be said of a law which if a parent has not made a will to undo its injustice, turns all the younger children adrift, and solely because they are the youngest!

For many years, I know, that in the upper classes, the minds of parents were trained and their habits formed to look to the Government to make

provision for their younger children. In those classes, I have heard it remarked, families relied upon the Budget for their ways and means for the coming year. Their calculations were formed upon an easy access to the public purse. The progress of public opinion has made it now more difficult to obtain such a provision; but, nevertheless, the appetite and the hope and the desire still remain. Many cling to a Government still, and keep well with it, in the hope that something may turn up for themselves or their relations. Too often the higher the rank, and the more unfit the individual, the greater is the desire.

Formerly the most influential and the most powerful were the best off; but, at all events, in these times influence and force ought to yield to justice and intelligence. Parents must now make that provision for their own children for which the whole nation used to be most unjustly taxed.

In the History of Europe, Mr. Alison is driven to remark, "The aristocracy have also, in every "period, been deeply implicated in the causes "which, unhappily, so often impair the efficiency "of our naval and military establishments. In- "cessant are the efforts which all the holders of "parliamentary influence make, during the tran- "quillity of peace, to get their connexions and "dependents elevated to situations which they are "frequently incompetent to fill. During the dan- "gers and excitement of war, Governments are both

" compelled by necessity to select the most worthy
" to discharge momentous and perilous duties, and
" enabled by the magnitude of their patronage to
" do so without alienating their parliamentary
" supporters. But under the limited establishments
" and with the comparatively unimportant duties of
" peace, this is impossible. Reductions on all sides
" then compel a rigid attention to influence in the
" disposal of situations, while the slumber of pacific
" life affords a prospect of the incapacity of the
" persons not being discovered or not becoming
" productive of public disaster. During the latter
" years of a long peace, influential imbecility is daily,
" in the army and navy, mounting more exclu-
" sively to the head of affairs; and when hostilities
" break out, a large portion of the officers in high
" command are generally found to be wholly unfit
" for the duties devolving on them. Thus, while
" democratic clamour starves down the establish-
" ment to a ruinously low standard in point of a-
" mount, aristocratic cupidity paralyses the direction
" and nullifies the exertions of that part which is
" allowed to exist. The disasters at the commence-
" ment of the war of 1739, during the first three
" years of that of 1756, during the whole of the
" American contest, during the first four years of
" the revolutionary strife, and in the dreadful cam-
" paign of Affghanistan in 1840, may all be traced
" to the combined operation of these causes."

When persons like Lord St. Leonards declaim

against a fair and an equitable mode of dealing with the property of intestates, because, they say, the present system works so admirably by keeping estates together, I think I may question their opinion; for that neither the public have been better served, nor is the land better tilled in consequence of its being owned by large proprietors, I shall hereafter show. But to raise a clamour against a measure of this kind,—when after all it will not affect great estates, for they are invariably entailed, and when they are not tied up, they can always be by will left to one only son,—does not seem to me a fair way of meeting the question. With regard to the efficiency of the public service and the forcing parents to provide for their own offspring themselves, public opinion will undoubtedly make a change, which this Bill never could.

Happily it cannot be said that the national feelings have been so completely changed and degraded by the Norman conquest, as to make parents forget or lose all parental and natural affection for their young; that in order to ensure their entire and constant dependence upon one member of the family, they are forced any longer to make them dejected, humble, and dependent.

The Normans for centuries effected this object by the most cruel laws, which actually remained in force until the reign of Henry VIII., for until then no one could dispose of his land by will. The spirit of those times still remains in our laws; for

unless a parent makes use of that power which was only obtained by a statute passed in that reign, the effects of this unnatural Norman innovation on justice are still in force. The nation has, after all, long ceased to be Norman in all its feelings and tendencies,—it no longer delights in the barbarous institutions of the Conqueror, but in those of the enlightened and excellent Saxons.

With pride and respectful gratitude we now look back to Alfred and many of his institutions which have remained and flourished in spite of the Normans. No unjust distinction was made under those institutions between the eldest and the other sons.

The law might, to prevent such a state of things occurring, as that of a parent not providing for his own, prevent the possibility of his making an unjust will, by assuming to itself the right of disposing of the property of the deceased in all cases, and making as it were a will for him—there could then only be one general rule applied to all cases. This would, I think, be most objectionable, it would tend to weaken the paternal power, already made very weak in the great families in this country, by the system of making the father dependent upon the son, the natural consequence of entails.

There are many and serious objections to the system which prevails in France, where it is assumed that society can make a better will than the individual could make for himself. In some instances, but in

very few, it may happen that society can do so; but with the exception of very few cases, there cannot generally be a more fit person than the owner of the property and the father of the children, to have the fullest control and power of disposal over that property. Such a power causes him to take care of it, to improve it, and to increase its productive powers. He has the additional stimulus of always feeling that he is doing something for those he loves and cares for—who is likely to be more just as a rule to his own children than their own father?—who could be found better informed and more impartial? If such a disposer of property did not exist, we should only be too happy to discover such a being. If you deprive him of that power, there must then be a general law, for it cannot recognize special and peculiar cases as the father would; there must then be such a division, as we apply to the personal property of intestates.

Most desirable as I feel it is, to apply one uniform law to the property of intestates, of whatever kind that property may be, I am convinced that every person ought to have the privilege of making his will. I am the more anxious to state my views on this part of the question, because many in their attempts to argue against my proposal, have said that I sought to establish the same law here, that exists in France. If they will only set their prejudices aside for a moment, they will find the cases are quite different. It is worthy of remark that Napoleon,

whose rectitude on this question strikes one so forcibly on reading the discussions which took place on this part of the code, was not entirely for the present law of succession in France. He argued most decidedly in favour of the parent having a greater power over his property, and said, with great truth, the nearer we approach the Roman law, the less will the right which nature seems to have entrusted to the head of a family be weakened.

As many persons are totally ignorant of what the French law is in this respect, it may not be uninteresting to extract the article from the code, and to show how it may work. Art. 913. "Liberalities either by acts of gift or by will, cannot exceed a moiety of the property of the disposer, if he leave at his decease but one legitimate child; a third, if he leaves two children; a fourth, if he leaves three or a greater number." For instance, if a man has £6000, he can leave, if he has only one child, £3000 to any one he pleases; if he has two children, he can give £2000 more to one child than to the other; if he has three he can then dispose of £1500; he can always dispose of £1500, whatever be the number of children, as he pleases; if he should have six children, one child might have £2250, and the rest only £750 each. The French are, however, well satisfied with the law, as it has now been established for a great number of years.

It is a very curious fact, that during all the changes that have taken place in France, and all

the violent reactions that have succeeded one another, the law of succession has remained untouched.

Neither Louis XVIII., nor Charles X., neither the King of the French, nor the Emperor of the French, with all the power each at different periods of their respective dynasties possessed, have ventured to alter it, although I can well believe some of them may have imagined it did not strengthen the monarchical principle.

The French feel that to it they are indebted for their present prosperity as compared with their misery under the old system. Their successive sovereigns dread the return of that misery which desolated the kingdom, and no doubt the present Emperor has no wish for socialism which is the companion of large properties and of absenteeism.

There is no doubt, as I shall presently show, that to so wretched a state was their country reduced under the old regime of "substitutions, majorats and droit d'ainesse," that although their agriculture is still in a very imperfect state, they have made in spite of revolutions, the most enormous progress, and have much less misery than formerly, and less pauperism than we have now. I quite agree with my opponents, that it is by no means desirable to adopt the French law of succession in this country, however well it may have succeeded there. I go even further, I should be very glad indeed, to see the great owners of landed property here, real owners, instead of only nominal owners. I am

confident such a power over their own estates would be the best guarantee for wealth and progress; it is moreover a power quite necessary to uphold the just authority of the parent.

I raise the same objection to the French law of succession, that I do to our system of entailing—the diminishing the paternal authority. Under the French law, it may be said, all the children are to a certain extent independent of their parents; under the English law, one child only, the one who is admitted to be the most important member of the family, who would, one might say, require the most careful treatment, and stand most in need of the mild restraint of a father, on account of the high destiny he is told he is to fill, is wholly independent of his parents, and not unfrequently adds to his independence by defying them. And yet this is a system seldom complained of here, while much is said against the French.

On the subject of wills Dr. Arnold says: "There "is something exceedingly solemn in writing words "which shall not be read till we can write and read "no more; in sealing a paper which shall not be "opened till we are laid in our graves." This ought indeed to be sufficient to prevent persons from making eccentric wills, but, alas! it is not found to be the case. The same writer, after observing that "a will in all its directions and bequests should be "free from extravagance and folly," remarks: "There are instances of wills in which the testator

" has seemed to indulge some strange fancy, as if " he wished to excite astonishment, or exercise a " capricious power even after he is dead." There probably will always be persons who abuse the privilege they possess, and who neglect to exercise it in a becoming spirit; but in such cases interference on the part of the legislature could not be attempted without trenching on the rights of property. There is, however, one kind of eccentricity, which is, I fear, gaining ground (for there is scarcely any conspicuous folly committed by one individual, that is not imitated by another almost immediately), and it is one which may, I think, be eventually attended with bad consequences; I allude to property being bequeathed either directly or indirectly to the Sovereign. A practice which might tend to create undesirable suspicions, to degrade the monarchy and lower the morals of the nation. And it appears to me that there could be no better moment than the present, before any evil has resulted or could result, for dealing with such a question. We have now on the throne a Sovereign beyond all suspicion, who no doubt would act as a faithful guardian in respect to any such bequest, either by taking care of the relations, or, in the event of no such relations existing, by applying it to public and benevolent objects. It would, under these circumstances, be easy to prevent any future evil consequences from arising, by enacting that in all such cases the property should be considered as that of

an intestate, and dealt with as under the statute for the distribution of the property of intestates. I merely throw this out as a suggestion, hoping that before long the Government will take it into serious consideration.

I will now say a few words on the much disputed point—what ought society to do where there is no will, where the deceased has not expressed any wishes as to the disposal of his property. Then it becomes the plain duty of society to make a will for the deceased; a most grave responsibility: it ought to lay down a rule, which cannot vary according to circumstances, founded on the soundest principles of justice. It must be just towards the memory of the deceased, just towards the surviving family, and beneficial to society; and it cannot be beneficial unless it be also just.. The law ought as I think clearly to avoid making such a will for the deceased, as he ought not to have made for himself.

Public spirit in a country like this requires or rather demands justice at the hands of the legislature, where an individual has neglected to express his intentions with respect to his property. The altered circumstances of the nation, the progress it has made in commercial enterprise and freedom, demand a simple rule easily to be understood, and that a just law with regard to all the property of intestates, in the place of the present most unprincipled and most complicated system.

Dr. Arnold strikingly remarks:—

"By far the commonest evil feelings manifested in wills are covetousness and ambition. The desire of leaving a name, of making a family, of conferring enormous wealth and consequence on ourselves as living in our posterity. Thence the spirit of tying up property for as long a period as we can, that our own power may be the longer felt, and the idol which we worship may not pass away. How often is the peace and mutual love of a family broken by such wills as these; when brothers and sisters are put in a wholly wrong position with regard to each other. One unduly exalted, the rest unduly made dependant. But here, too, the thing which is most plain on the face of such a will, is, that it could not have been an act done in the name of the Lord Jesus. For if there be such sins as covetousness and ambition, and worldly-mindedness, I know not how they can be more shewn than by thus retaining them to the last, and declaring that riches and worldly rank are things far more precious to us than love for our children individually, or their cherishing towards one another the natural feelings of brotherly confidence and affection."

Now if an individual has neglected, when his property is in land, to make a will, the law steps in and makes just such a one for him, as Dr. Arnold describes he ought not to have made for himself.

There is, however, this additional hardship, the individual would in all probability, even with all his feelings of pride, have shewn a particle of affection to his younger children, he would have given them a wretched pittance, so as to acknowledge them as his own: the law on the contrary gives them nothing, it not only leaves them to starve, but it insults them, as it does not acknowledge them to belong to their own lawful parent.

A great difference no doubt exists between a wrong which is perpetrated by the law, and one which is only permitted by the law,—between a cruel will made, as it were, by the law, and a cruel will which an individual is not hindered by the law from making. It is not the province or the duty of the law to make the fancies and the unjust prejudices of men prevail after their death to the injury of their children, at a time when perhaps they may see reason to repent of the misery which their accidental or intentional neglect of making a will has caused.

Mr. J. S. Mill says, "The law ought to do for the children or dependants of the intestate, whatever it was the duty of the parent or protector to have done, but from accident, or negligence, or worse causes he failed to do." Now we do this, and make a very just and proper will with regard to the property of the intestate if his property is personal, but if it be real property, then we allow a most cruel and barbarous feudal law to step in and oppress a part of the people now, as it formerly did the whole nation. "Le systême politique de la féodalité c'est appauvrir pour regner."

Where fortunes are concentrated in few hands, we often find a powerful aristocracy combined with the wretchedness of the humble class, where fortunes on the contrary are not so concentrated, the more general the prosperity.

Almost every step we have made in civilization

is marked by an amelioration in the rules and laws relating to landed property, and by the destruction or modification of some feudal fiction. In early stages of society property and man himself were fettered in every way.

Kent, in his commentaries on American law, after stating that neither lord nor tenant could alien without the consent of the other, that learned writer adds, "This restraint on alienation was a "violent and unnatural state of things, and con- "trary to the nature and value of property, and the "inherent and universal love of independence. It "arose partly from favour to the heir, and partly "from favour to the lord, and the genius of the feu- "dal system was originally so strong in favour of "restraint upon alienation, that by a general ordi- "nance of the book of Fiefs (lib. ii. tit. 55) the "hand of him who knowingly wrote a deed of alien- "ation was directed to be struck off."

It is only when the civil right is softened by civilization, that such barbarous laws are got rid of, and those relating to succession become subject to ideas of justice and of uniformity; we have seen monopolies and privileges, whether directly sprung from feudality or indirectly from the effects of that system, successfully attacked. Land has begun to be put upon a fairer and more equal footing with respect to other property. Free trade, thanks to Sir Robert Peel, has been established, but as yet only with regard to the produce of the soil; what were looked

upon as vested rights and privileges have been entirely destroyed, because they were unjust.

We may reasonably now require that Free trade principles should be fairly and fully extended to the soil as well as to its produce.

It really seems strange now that that very class which has gone through so much, and has benefited so much by Free trade, should take alarm when only asked to give up a prejudice, and where no right is attacked. There are some who feel more anger, at the idea of parting with this nominal prejudice, than they felt when they were about to give up the Corn Laws. We have seen how they clung to Protection, having been accustomed to live under the shadow of that tree, the privileged who love privilege and hate progress ought to take warning and bear in mind that the general good, will in the end bear down particular and selfish interests.

There must be something behind all this fear and alarm. Is there some unjust right they are dreading the exposure of? Do they imagine that by retaining an unjust prejudice, they will be the more likely to retain the unjust right? For in proportion as the justice of this proposal is forced upon them, does the alarm at the danger increase. What, may I indeed ask, is there so dangerous and so alarming in that which I am asking for? I am only endeavouring to prevent by a very simple process, the possibility of any instances of oppression and injustice, such as I have alluded to,

ever again occurring to younger children, through the intestacy of their parents. This is a cause in which all ought to be united; humanity, to say nothing of justice, requires it. Prejudices and partial affection must bend and make way for natural affection and practical honesty.

Before this modest and just proposal was rejected, serious and grave objections ought to have been raised against it,—arguments, and unanswerable arguments, ought to have been adduced in favour of the present law, and of the injustice it is the cause of. Whatever the attempts may have been, no grave objection has been urged, no argument has been adduced. My opponents are overwhelmed with those difficulties which happily always overwhelm those who attempt by argument, to support an act of injustice. I do not wish in any way to hurt their feelings, it is the system I attack, and not the men. Among them there are many for whom I have the greatest respect. I regret that their opinions have, as it were, been formed for them by the situation in which they are placed, and not by their unfettered judgment.

If I had attempted to do the very opposite,—to apply the same law to personal property that is now in force with regard to freehold,—to make the eldest son inherit all the personalty where there is no will, instead of dividing it, I could not have alarmed the real and the just feelings of the middle classes more than I have the imaginary and unjust prejudices

of the upper classes. Had I, or any one, made such a proposal, there would have been this difference, that in the one case the fear would have proceeded from a natural horror of an injustice being done, while in the other, it can only proceed from an unnatural dislike of an act of justice being acceded to. Such a proposal would only in another way remove the anomaly which exists with respect to the descent of property. It might be urged against it, with perfect fairness, what was enforced by an eminent writer, "That if he was asked what would be the most efficient way of ruining the morality of a people? the answer would be, to introduce a state of things, which, by giving the whole fortune to one child, and leaving hardly any thing to the rest, places the one in opulence and the others in want; the one tempted to wrong by the too great facility of satisfying his desires, the others by the too great difficulty of gaining a livelihood."

There is, at all events, nothing in any way which can tend to ruin morality, in my proposal; but the very reverse. If I had attempted to carry out any feudal principle or notion, or had endeavoured to retain one, there would then have been cause for alarm; for many feel, that although feudality was once considered necessary, as the means of preserving property, it is now not only unnecessary, but even dangerous, as applied to the security of property. There is no greater security for the well-being of a civilized nation than its freedom; or for an estate

than for its owner, and for those either directly or indirectly connected with it, to be free also in every way. We have adopted Free trade principles, —principles which seem to be so directly opposed to the feudal principle, that they cannot long co-exist. The one requires, in order to compete successfully, the greatest amount of freedom and the freest possible circulation of the soil; the other has always put every possible obstruction in the way of its circulation; and the very law of which I complain, is the prominent feature of that system, invented and introduced solely for the purpose of preventing the circulation of the soil. Let such as cry out danger, recollect that the real danger and responsibility rest with those who in days of great progress are the responsible governors and representatives of a nation which sets an example to the world, but who refuse to move, and attempt to retain the prejudices which originated in other times, when justice was as little thought of, as the people. I would entreat them not to look back, except to take warning and observe what have been the ill effects not only of refusing to move with the times, but of turning a deaf ear to justice. They have now to deal with an intelligent people, a powerful middle class, and above all, with parents in those classes who feel determined that natural and just rights shall be considered before unnatural and unjust ideas.

A free people, living in a free country, in these

times are not likely long to submit to an unjust Norman innovation on natural affection and on the ancient and more natural laws of this country, particularly when they understand that the object of the change was then the more effectually to subjugate them, and can now only be retained in order to retain a little longer an unjust prejudice. It is getting too late now any longer to try to keep blinkers on the independent use of the understanding. It does not follow that laws which were considered by the Norman conqueror necessary for the subjugation of a scattered population of two millions will be adapted to a free and intelligent population of nearly twenty millions on the same space, now so crowded together in towns that the island has almost become the capital of the world. There was then no association, no trade, no liberty; now, on the contrary, we have powerful combinations in trade, we have the trade of the world, and we are free.

The more primitive and ignorant the people, the more despotic the law; but, strange to say, with us, while the whole state of society has changed, the laws and customs essential for the former state remain.

Even if the people were a thousand times more ignorant, and Parliament a thousand times more intelligent, it would have no right to retain laws which it imagines to be for the interest of a few, without even pretending to shew that they are just. The people are now daily acquiring property, and this

they are doing in spite of laws which seemed to make the difficulty so great as to amount to an impossibility.

There are younger children also, who may by argument, in their turn, endeavour to force the legislature to amend a law which treats them as aliens, and illegitimate, and which is only supported by clamour and mere prejudice in high places.

It has been urged against this measure, that it would repeal, what some call, the Law of Primogeniture: but when there is no law which compels anybody to give his property, either landed or personal, to his eldest son, I do not quite understand the meaning of such an objection. Others have said, that it is essential to have a head of a family for the rest of the family to look up to, for him to be as it were a centre in the midst of them, a guardian, a director, and a support in trouble. All this, undoubtedly and most perfectly a parent can be and ought to be. But to expect the elder brother thus to act towards the younger portion of the family, is to require from him more than experience tells us we are justified in expecting. It may also, I think, be said very fairly, that it is taxing the independence of the younger children too much, as well as the property of the eldest.

Sir Samuel Romilly, in 1807, on bringing in the Freehold Estates Bill, said with great truth, what applies to this question: "I know how easy it is "to contemplate sacrifices we are not ourselves

"called upon to make, these heirs have a right to "urge the law as their guide, and if reproach rests "any where, it is certainly due to the legislature "which has so long sanctioned the evil."

John Locke says, "That a father may have a na- "tural right to some kind of power over his children, "is easily granted; but that an elder brother has so "over his brethren, remains to be proved: God or "nature has not anywhere, that I know, placed such "jurisdiction in the first-born; nor can reason find "any such natural superiority amongst brethren. "The law of Moses gave a double portion of the "goods and possessions to the eldest; but we find not "anywhere that naturally, or by God's institution, "superiority or dominion belonged to him;" and he further says, "He that reads the story of Jacob "and Esau, will find there never was any jurisdic- "tion or authority that either of them had over the "other after their father's death: they lived with "the friendship and equality of brethren, neither "lord, neither slave to his brother; but independent "of each other—were both heads of their distinct "families, where they received no laws from one "another, but lived separately, and were the roots "out of which sprang two distinct people under "two distinct governments."—*Locke's Treatise of Government.*

The great estate—the great house—the powerful head of the family—the hospitality of the elder brother will, whether this Bill pass or not, remain

the same, for this plain reason, those estates are invariably settled and entailed. But if through some extraordinary combination of circumstances the owner of a great estate should, by some chance, happen to be a free agent, that his land should actually be his own, and also that he should either by accident, or from not having a strong feeling in favour of all his property going to one child, die without making a will, in this most remarkable instance all in a family would share alike. It would be a case of very rare occurrence—it would be an instance of suffering, some will say, for the eldest, but after all not very great, though exceptional and extraordinary, for he would only suffer from sharing with his other brothers and sisters equally, and his privation would not compare with the actual suffering of all younger children, under the present law, from their having nothing to share. Their suffering is not diminished by the contrast of finding themselves comparatively destitute, while their brother is wealthy and powerful. Where there are settlements and provisions made for younger children, they are generally made without reference to the number of children; what might be a very fair provision for two or three, is a wretched one for seven or eight, and the more so when the eldest son is provided for most amply, and without reference to the numbers or the wants of his brothers and sisters. Whether this extreme inequality in a family be right or wrong, just or unjust, it will remain the same, for my Bill does not

in any way interfere either with settlements or with any man's right to make a will.

Lord John Russell, the only member of the Government who has expressed any opinion on the second reading of this Bill, did not appear to be quite happy on the occasion; he seemed as if he had undertaken to oppose it on the part of the Government as a matter of course, rather than from his own convictions, and sense of justice. He laid it down as a rule, that the law ought to conform with the general practice in families, namely: "that if it was found the general practice of rich and poor to leave their lands to their eldest sons, then the law should adopt that as the rule in case of intestacy." The Noble Lord assumes that they do, but I ask, "Is it the fact?" Among the middle classes, (the only classes who have the power of disposing of land by will, for the upper classes, in consequence of entails, have not that privilege,) the feeling almost invariably is, to sell the land and divide the proceeds among all their children. Solicitors could tell him that where the middle classes possess land and are made acquainted with the difference in the Law of Succession between a landed and a personal estate, they invariably make a will, to prevent the eldest son taking the whole. Medical men also state, that in these classes, when the dying person's property is in land, he is asked whether he has any last arrangements to make, with regard to his property; as they know too well by experience, that families

are frequently reduced to misery in consequence of a will not being made. But if the Noble Lord were even correct in his assertion, that the rule with rich and poor is to leave their land to the eldest son, does it not appear to be a somewhat novel and unsound principle for the law to adopt; that where no intention has been expressed, it should be the means of inflicting cruelties and hardship on a family, solely because it is imagined that some individuals might be supposed to desire them to be so inflicted. What a strange principle this might be fully carried out! what an example for a law to set!

But when Lord John Russell, a great authority in history, said, it was a mistake to imagine that this difference in the law of succession, in cases of intestacy, between land and money, was a feudal notion, that was an assertion which, coming from him, did altogether surprise me. From all that I have been able to read on the subject I am perfectly convinced, as I am sure he must be upon consideration, that the sole right of the eldest son to the whole of the succession of the land, and the absolute exclusion of the rest of the children, is peculiar to the feudal law.

I had always looked upon this as a violation of all the principles of justice laid down by the Roman law which regulated the succession in cases of intestacy according to the natural feelings of the parent, to whom the subsistence and enjoyment of

all his children was supposed to be equally dear. This violation of what would appear to be natural justice, the absolute right of the eldest son to inherit all the land, and the destruction of the parent's power of willing his land, was said to be justified by the occasion, and by the then state of society. For these simple and natural ideas of property, a new one was substituted by the feudal law, that all land was held upon the terms of military service, and thus all the landed property of the country became a part of a great military establishment.

Feudality causes the class whom it intends to favour to remain unproductive, and it also makes that very labour which might be productive and a blessing to the nation, a source of wretchedness, poverty, and unproductiveness.

In feudal times legislation, such as it was, was for the interest of the land, and as the land was held by the few, laws were framed to keep it out of the reach of the many.

In Doomsday Book, for instance, the rental of the whole county of Middlesex amounted to £932 8*s*. 10*d*. We find that four-fifths of the whole county were in the hands of seven holders, of whom four were ecclesiastics and three laymen.

Even in our own times it was thought desirable to continue a rule that none but landowners should sit in the House of Commons. In order to exclude the trading classes and to make them elect land-

owners, there was an act, now happily repealed, by which no one could sit unless he had a qualification of some hundreds a year in land. The principle was clear enough, it was to ensure legislation in favour of the landed interest. A Baring or a Rothschild then would have been ineligible, even were there no obstacle in the way of creed or statutory oath, although he had the wisdom of a Solon, or the wealth of a Crœsus, unless he possessed the requisite amount of property in land.

The feudal laws, and at all events this one in particular, seem, as Adam Smith said, to have survived the occasion for which they were invented. There can, I am sure, no longer be any doubt that the present law of succession to land, is a part and parcel of the feudal system.

Lord John Russell assumes that this Bill would cause an infinitesimal division of property. He says, "Supposing a man had £100 to leave among ten sons, the State was not in the least interested whether £10 was left to each, or £90 to the eldest son and £10 amongst the rest; but if a man left property of the value of £100 in land, to be shared equally by ten sons, the case was very different, for it was evident that the property could not be managed as it had been, and that the State would be a loser by such a disposition." If under the proposed alteration of the law, such cases were to be of frequent occurrence, undoubtedly the state would be the loser; it would at once prove, what by the way is by no means

likely to occur here, that there is a class of owners of property so destitute of common sense as to be entirely unable to make any arrangement for themselves, for their mutual advantage. I will undertake to say, that in such an extreme and hypothetical case either the property would be sold entire, or one son would take it, subject to payments to his brothers. As an illustration, I might say that nothing of this kind has occurred with regard to the leasehold house of an intestate, which is personal property. In London most of the houses are leasehold, and descend as personalty. I have never heard of a family dividing a house under such circumstances, and quarrelling as to who is to have a room here, and another a room there; nothing of the kind is heard of in the case of a leasehold field, where one might take one side, another the other side, and a third the middle of it; either a sale or an arrangement is invariably made. In those very common cases of a farmer dying who has a lease of his farm, the family agree among themselves and arrange in an amicable manner generally, who is to carry on the business, they do not all quarrel and attempt to carry it on where there are ten children. I have not, I own, such an opinion of the follies and of the total absence of common sense among my countrymen as the Noble Lord endeavours to force us to suppose he himself has.

He has been obliged, by way of raising objections to this Bill, to suppose another improbable

case which might arise if it passed. A landed proprietor, he says, brings up one son to the Bar, and he becomes a Judge; another is in the army, and he becomes a General; the father has spent largely in educating the one, and in buying a commission for the other; it might so happen that they might be better off than the eldest. If such a case should occur, and the parent made no will, the two sons in question would be entitled to their share of their father's estate, and this shows how important it is that the parent should have the power of making a will; he can deal with an exceptional case, the law cannot: it can only lay down a general rule. The law ought to meet the countless cases of actual hardship, which are constantly occurring under the present system; while the parents can meet such a very rare case, as the Noble Lord thinks possibly might occur. This hypothetical case could not be met by special legislation, but the unfortunate cases of cruelty which arise through intestacy, could be met by substituting for the present law, a sound principle and a just law. The ingenious and hypothetical case adduced, would be much more likely to occur where a parent has all his property in personalty, than in land: would the Noble Lord, I may fairly ask, adopt the feudal law of succession to personalty, in order to meet such a case, and to prevent the younger sons, through their own exertions, being better off than the eldest without exerting himself?

It is all very well to say, that if the law as it now stands, is the cause of hardship and of injustice, individuals can by will remove the cause, but it is a serious question to consider whether the law ought to contemplate the possibility of its being the cause of a number of unjust acts, in order to provoke the well-disposed to counteract by will, what they feel would be acts of injustice. Poison is as it were administered, in order to show how skilfully the antidote can be applied; but in such a wholesale system of poisoning, many fall the victims before the antidote can be administered. M. Passy, speaking of this class of opponents, says:—

"In the midst of the struggles which excite them every weapon which can aim a blow appears good to them, and they care little about the origin or the tempering of those which they direct against their adversaries. But what must excite surprise is, that there should be found, principally in England, so many men devoted to science, so many distinguished political economists, who have not had the same opinion with regard to the freedom of landed property which they have with regard to the freedom of property which arises from industry, and who have thought that artificial regulations and combinations of human inventions were able to do better than the simple and natural game of interest when left to itself. In the opinion of these men, it was impossible that France should not shortly expiate the error of the system she had adopted by letting things take their own course. The least which could happen to her was, to see her soil more and more subdivided, covered with multitudes of peasants, who would be reduced to a condition nearly the same as that of the poor Irish and her agriculture, destitute of capital, in a state of stagnation and decay."

In the House of Lords, another very grave and learned objector to this measure, went out of his way, and before it was even under their Lordships' consideration, he not only prejudged the case, but was pleased to denounce the plan. Lord Campbell said, "He should be the last to wish to do away "with what some wildly proposed to destroy, the "distinction between personal and real estate; and "he must say, he looked with alarm at what had "recently taken place elsewhere. He looked upon "such a proposal as being most insidious and most "dangerous to the institutions of the country; the "effect of it would be, though it was said to leave "to the landowner the opportunity of making a "will, to do away with the law of primogeniture, "both in theory and practice, and that House would "not survive."

Now this, after all, is only a gratuitous assertion, it is not an argument; if calculated for the audience Lord Campbell was then addressing, it certainly is not at all calculated to meet the reasoning powers of a thinking people out of doors? Has he lived so absorbed in another sphere, that he has not observed the regret, with which the public view naturally fine characters in the aristocracy, spoilt, many of their fortunes dissipated and their vices fostered; all in consequence, as most people know, of that system which Lord Campbell attempts to uphold? He too must also have mourned over the unmixed evil, the immoral and disgraceful practices, arising from horse-

racing, for he cannot fail to have had his attention drawn to that low and cunning gambling adopted by Peers and their sons, and imitated by others; this is again among the results of a forced and unnatural accumulation of too much wealth upon idleness. By it the happiness of families has been destroyed, and the tenderest ties of affection ruptured, for the gambler has none of the feelings of other men, he has no heart.

A better system of education and of early training, would no doubt be of great service. But I am always told that a peculiar system is required for the young aristocracy. Now I quite admit that where you accumulate enormous wealth upon a comparatively small number, that small number ought to have more care; a more virtuous, and a more moral education, than any other class. Strange to say, those schools, the public schools which are more exclusively for the upper classes, do not even pretend to adopt improvements in modern education, but persist in an old fashioned, a most experimental and questionable mode of training their youth. There the young mind is early taught the importance of, perhaps, not telling a direct falsehood, but of concealing a truth, of deceiving; this used to be called "*shirking*." A boy who was committing some petty offence, for instance, out of bounds, if he "*shirked*," if he concealed his fault, he would not be punished; if, on the contrary, in an open and frank manner he so

far from concealing, admitted or explained it; because, in short, he did not shirk, punishment would await him. A species of slavery which in cruelty and in its petty tyranny, is by no means unlike that which we have happily succeeded in abolishing in our colonies, is not only still practised, but is sanctioned, for no other reason than because it is an old custom; the fagging in the one, is the same as slavery was, in the other. These would be considered by any reasonable person as blots in a system of educational training; they are, however, in these schools which ought to be model ones, warmly contended for, as absolutely necessary to make a boy a gentleman in after life. I often ask myself, seeing what he is after this peculiar treatment, what he would have been without such a moral training? If we are to maintain an unjust law, under the false impression of maintaining the institutions of the country, it must be melancholy for Lord Campbell to be a witness to the sad evils which result from it. No one wishes to destroy our valued institutions, but to attempt to uphold them by such imaginary and unjust means is the surest way of destroying them. It is really too bad of Lord Campbell to taunt me in this way, and for doing what? For doing that which he, in his capacity not only of a legislator, but still more as a chief justice and a legislator combined, ought never to cease from labouring at, until he has removed anything that borders on an injustice. It ought to

be forced over and over again upon his attention, that justice is not only necessary for all men, but ought to be their absolute and invariable law. This being so, how much more is it necessary for those who are judges, to possess this their brightest ornament, and chiefest virtue. How sad is it then to find injustice and unjust prejudices appealed to, with the view of raising and encouraging a prejudice to defeat a just measure.

He in his exalted station ought to be very far from attempting to throw discredit upon a Bill which is based on justice alone, and upon the individual proposing it, by the use of such a term as "most insidious." Such an attempt, I feel, is not right, particularly when it comes from so high an authority. If the epithet is applicable to the measure, it is equally so to the individual who makes the proposal. I wish I could feel it was an objection raised or a phrase resorted to in the heat of debate, but far from that, it must have been premeditated, and was inappropriately dragged into a debate on another subject, at a time even when this Bill had not been alluded to, by any one present. In the judgment of every one, as no doubt it must now be in his own, it was an opinion unasked and uncalled for, crudely and unfairly pushed forward. As it is my intention to persevere until I have removed this injustice, *labor ipse voluptas*, I am not without the hope he may yet be convinced, and that when this Bill is legitimately under discussion in

the House of Lords, as it assuredly will be in the course of time, it will then have his support.

How different do his ideas seem to be from those of that great and enlightened man who, in a comparatively unenlightened age, undertook the task of attempting to persuade Parliament, to make a man's freehold estate subject to the payment of his debts. Would Lord Campbell have opposed Sir Samuel Romilly's bill, on the ground that he "wildly proposed to destroy the distinction between personal and real estates?" Has he forgotten that this simple and just proposal was met by the same assertion which he now makes, and which he cannot claim as original, that it would endanger the House of Lords? How did that great man, not inferior by any means to Lord Campbell as a lawyer, or in any other respect, meet the objection; he said, "As for anything which has been "urged against this measure, on the ground of its "tendency to weaken the aristocracy, I am really "ashamed to advert even for a moment to such an "objection. The most malignant enemy of that "body could have devised no charge so calculated "to bring it into unpopularity and contempt, as this "insinuation—on the privilege of being allowed to "commit injustice, and to injure the other orders of "society with impunity. Let us rescue the aristo-"cracy from so unmerited an imputation; let us "show that it owes its weight in public estimation, "not to unjust distinctions of law, but to those

"virtues which, I trust, will never cease to be the "characteristics of English gentlemen."

Had he lived but a few years longer, he would then, in all probability, have effected such improvements in law and equity, that Lord Campbell's fears, which really do seem to be groundless, would through his success, never have existed, and never been thought of. Although we have no right to search into the private transactions of a man's life, we may be allowed to make an exception in the rare instance of one man, whose memory is so universally respected by all who have studied his character and history, that those who did not even know him, can but mention his name, with the affection and gratitude they bear, towards a relative and a benefactor. A grateful and an admiring nation may, by right, claim as their own for public example, the private arrangements he made for his children. He had not a particle of that pride peculiar to all men in the upper classes, who have raised themselves, and which drives them to imagine that there is but one way of handing their name down to posterity, the accumulating their wealth upon one son. Such persons fall in with the prevailing fashion, and feel as a matter of course, that it is better to be looked up to with fear, as the powerful head of a family, than adored as an affectionate father by all his children.

It is a remarkable circumstance, that Sir Samuel Romilly had no feelings of the kind; he who was

so affectionate and tender in the relationship of husband, father, and brother, as well as the great labourer for the good of mankind, I have always understood, left his landed estate in the same way as my Bill would have done, had he died intestate.

In him we find an instance of a man who made his own fortune, a great lawyer, not dreading the evils of a distribution of property; and in his own family, furnishing a complete answer to those who say there would be in case of division, a quarrel, and an infinitesimal division of the soil. In his happy and united family, the landed estate remained for years undivided, and perhaps remains so still; each had his share, but the patrimonial estate was, and I believe is still, not divided. He has most successfully and happily proved in his own instance, in private and in public life, how true is the remark made by Barrow, that "Justice in its own nature is, and by the common agreement of men hath been designed, the guardian of peace and sovereign remedy of contention." His venerated name, without any of the usual false ornaments, is still represented by the public and private virtues of his sons, while a great number of people are deeply grateful to one of them, for the many excellent measures he has introduced.

When we find persons like Lord Campbell insisting in these days, that a difference ought to be as it were artificially kept up, by legal subtleties, between land and other property, the more are we in-

duced to sympathize with Lord Brougham, when on the loss of his friend, he says—

"The friend of public virtue and the advocate of human improvement, will mourn still more sorrowfully over his urn, than the admirers of genius or those who are dazzled by political triumphs. For no one could know Romilly and doubt that as he only valued his own success, and his own powers, in the belief that they might conduce to the good of mankind, so each augmentation of his authority, each step of his progress, must have been attended with some triumph in the cause of humanity and justice. True, he would at length, in the course of nature have ceased to live; but then the bigot would have ceased to persecute; the despot to vex; the desolate poor to suffer; the slave to groan and tremble; the ignorant to commit crimes; and the ill-contrived law to engender criminality."

Lord Brougham also himself in his Political Philosophy expresses his view on this subject, with his usual clearness.

"The influence of the monarchical principle, but especially when combined with aristocracy, as in European monarchies it ever must be, tends to the establishment of a division of property, and of influence in the families of the community not very wholesome for public liberty or for the character of the people, though attended with some redeeming consequence; we allude to the rule of primogeniture. The making a little monarchy in each house is the object of this rule, which enriches the eldest son, makes him idle and overbearing, while it leaves the rest of the family dependent upon him, and renders them obsequious to him. The law of entails is the abuse of the law of primogeniture, and their consequences are prejudicial to the happiness of families, as well as to the wealth and commerce of the country."

Why should we then persist in maintaining a principle which tends to deceive families, as to the best

means of preventing their decay, persuading them to be unjust in order to remain powerful, to rob all their children in order to enrich one, and to decorate as has been remarked with the name of noble, that inhuman pride, which drives a father to forget the most natural and indispensable of affections.

What a morality are we encouraging to teach the heir he is doing right when he takes all! only because the law takes that all, from all, in order to give him all! A cruel law tries to make him feel it is right his brothers and sisters should have nothing, while he has every thing. Selfish interest and the technical injustice of the law together, may certainly persuade a man of almost anything, but still even the favoured heir must now and then secretly think, if he ever does think on such a subject, that his right is not based on strict justice. He cannot at all events pretend the law has for him pursued the ends of justice, but rather the ends opposite to those ends. Pride prevents justice being done with regard to younger children, while, as Daines Barrington* says, "equality of distribution even at this day (1776) generally takes place in personal property, which being of a more fluctuating nature, pride will sometimes permit to be properly distributed."

Those who adopt this view, have allowed every sort of alarm and prejudice to assist them in re-

* Observations on Statutes.

taining it. They have been carried so far as to feel perfectly certain of a fact, which is established only in their own imaginations, that whenever this Bill becomes the law, there will no longer be any great estates left. And even this assertion is not enough for them; they have laid it down as a rule for themselves, that great estates are a prominent feature in our prosperity—a guarantee for peace and good order, and the surest way of ensuring good cultivation. I at once say that their alarms are groundless, and that there are neither arguments, nor facts, to justify their assertions.

If ever it should happen that a great proprietor has his estate free, not entailed or settled, the feeling in that class is so decidedly in favour of making an eldest son, that there can scarcely be a doubt such a proprietor would make a will in order to keep his estate in the hands of one child. The feeling is so strong that it does not require the assistance of a law. As long as these feelings are so strong with such persons, in favour of the present system, they will, in those very rare instances where they have the power, carry out their views, of accumulating the land on one child, by the simple process of making a will. Where they have not the power, which in the majority of cases is the rule, there need be no ground for the alarm, for all their wishes are carried out for them, and will probably be so for ages to come. For after all, entails in this

country, though nominally only for any number of lives in being, and twenty-one years beyond them, are practically, perpetual.

The great estates are kept together in their present positions in consequence of the practice of settling and entailing them, and not in consequence of the present law of succession. It scarcely ever happens that a great landed property is neither settled, entailed, nor taken by the heir at law as a right. Wherever aristocratical notions prevail, the power of willing is cramped by entails. The will, it is said, is the work and the manifestation of individuality. Aristocracy is the spirit of Conservatism; under it every thing must be sacrificed to the existing order of things. The struggle too often lies between two classes; the one wishes to keep their power, the other to have a share in the destiny of their country.

It is very easy to see, how the present system of entailing, works. Let us begin with the by no means uncommon case, of a person who is anxious to found a family, and perpetuate his name. For instance, a great lawyer or a merchant, has accumulated a large fortune in the funds; he imagines he will have more power and be of more consequence by becoming a great landed proprietor, and accordingly transfers his property, and buys a large estate. A. thus become the great proprietor, falls in with all the habits of the society of which he now forms a part, and settles the estate strictly on his

son B. and for twenty-one years beyond, on his yet unborn grandson C. A. charges the estate with a jointure for his widow, and with the fortunes of his younger children. When B. inherits the estate, he takes it subject to these encumbrances already begun. The next event in the family after C.'s birth, is his marriage. C., the last in the entail, requires an income to marry upon; B., the father, makes a bargain with him, and says you will be so well provided for when I die, that in consideration of what I allow you now, you must agree to re-settle the estate, and charge it with fortunes to be paid to my younger children at my death. Not unnaturally, B. tries to give as little as he can, and to get as much as he can for those whom he loves with equal affection; while C. tries to get as much as he can for his present, and retain as much as he can for his future enjoyment. The estate is thus re-settled and entailed upon an unborn son D., and then again new deeds, a new encumbrance, and new jointures, are made. We cannot wonder at so many estates being overwhelmed with debt, and the nominal owner left with little besides his ancestral pride and his debts.* The ambition of living as his ancestors

* "The only people to whom stock is commonly lent, without their being expected to make any very profitable use of it, are country gentlemen who borrow upon mortgage. Even they scarce ever borrow merely to spend. What they borrow, one may say, is commonly spent before they borrow it. They have generally consumed so great a quantity of goods, advanced to them upon

did, generally prevents prudence coming to his assistance. What he looks upon as an act of great condescension, viz. marrying the daughter of a rich citizen, is by no means the uncommon way of rescuing his family from decay, a marriage of policy but perhaps not always of love.

Why then all this anger at, and rancour against this Bill? It is quite clear that it cannot affect such estates; the debts and encumbrances may, and constantly do, force them to change hands. Wherever they do, an improvement immediately takes place in the management, whereby the amount of employment is increased, and the general welfare of those employed, increased also.

There is no reason for an imaginary alarm lest a just measure of this kind should pass into law, but on the contrary there is real cause for alarm when we look at the constantly accumulating amount of debt with which the great estates are overburthened. Not debts, be it remarked, contracted for the purposes of improvement, but debts of another kind, the natural attendants upon the artificial and involved manner, in which many of our country gentlemen live. The proprietor is often reduced to the degraded position, of being only the nominal owner of the estate on which he lives. His land is naturally the very best security for raising money for the purpose of improving it; yet his hands are so

credit by shop-keepers and tradesmen, that they find it necessary to borrow at interest in order to pay the debt."—*Adam Smith.*

tied, he and every thing about him so involved, that he cannot make use of it, and he is actually obliged to implore the Government to assist him, to lend him money in order to improve his own estate. Thus the Government borrow of one class in order to lend to another and more favoured class. Meanwhile this powerful class of landowners are content with remaining quiet under the stigma, that they who have been for centuries our law-makers have managed all the laws relating to their own land and their own affairs so badly, as to be obliged to pass an extraordinary law, and obtain an extraordinary power in order to enable them to improve their own estates.

As I am not proposing to meddle with these improper loans which have been obtained by great proprietors, or with entails, I do not see why grave charges should be made against this Bill, as if it could interfere with entails. When so much praise is unnecessarily lavished on that system, and wholesale condemnation on this Bill, I think it would be well to reflect for a moment upon the evils of entails; at all events, it is worthy of consideration whether the good proceeding from them is such, as to require the rejection of this Bill, that an injustice should be maintained and continued, only because it is imagined that an act of justice might by some possibility interfere with a very questionable system. Let us see what lawyers of eminence have said on this subject. I find the following very curious pas-

sage in Daines Barrington's observations on the statute which established entails:—"Besides the "intricacy and perplexities in the law; besides the "stagnation of landed property, so contrary to the "promotion of industry, these limitations have been "productive of perpetual disagreements between "the father and his eldest son, which indeed he "well deserves from his most unnatural treatment "of his younger children, though from custom the "hardship does not perhaps strike him, when he "makes his marriage settlement. Younger children "in this country are not indeed exposed as they "were amongst the Grèeks and Romans, and as "they are to this day in China; but the very "scanty provision made for them, in comparison "with the eldest son, seems to approach nearly to "this barbarity.*

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"The perpetuities established by this statute in "process of time had so much contributed to the "increase of power in the barons, that, about two "centuries afterwards, it was in a great measure "evaded, by the invention of what is called a com- "mon recovery; it was impossible for the crown to

* Mr. Locke, after having mentioned this most barbarous of murders (as he terms it), adds, "The dens of lions and nurseries of wolves know no such cruelty as this; they will hunt, watch, fight, and almost starve, for the preservation of their young; never part with them, never forsake them, till they can shift for themselves."

" procure a repeal of this law in the House of " Lords, and therefore the judges had probably an " intimation that they must by 'astutia,' as it is " called, render a statute of no effect, which the " king could not extort an alteration of, from one " part of the legislature.

" The great benefit arising from this method of " cutting off an entail, seems to have made us shut " our eyes on two very glaring improprieties in this " fiction of a common recovery. The first is that " it is directly in opposition to the express words " of a subsisting law, and let the inconveniences of " a statute be what they may, no judge, or bench of " judges, can constitutionally dispense with them; " their office is 'jus discere,' not 'jus dare.' As " then, the mischiefs arising from this chapter of " Westminster the second are universally seen and " acknowledged, why should it not be repealed by " that power which can only abrogate it, the Legis- " lature?

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" The other impropriety in the common recovery " is the very ridiculous and absurd fiction by which " the statute is evaded.

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" Most men of fortune and rank in this country " never enter into a court of justice but to go " through this most ridiculous ceremony. Can the " serjeants who mutter certain jargon or the judges " who preside, explain to such a person what is

"going forward? what an impression must this "leave with regard to other legal proceedings! In "this enlightened age, when other questions are "decided with such strength and force of reasoning, "without that refined subtlety which formerly pre- "vailed to the disgrace of the law, it is high time "that there should be an end of such unintelligible "trumpery."

Blackstone, speaking of this "family law," remarks that—"Children grew disobedient when "they knew they could not be set aside; farmers "were ousted of their leases made by tenants in "tail; for, if such leases had been valid, then, "under colour of long leases, the issue might have "been virtually disinherited: creditors were de- "frauded of their debts; for, if tenant in tail could "have charged his estate with their payment, he "might also have defeated his issue, by mortgaging "it for as much as it was worth: innumerable "latent entails were produced to deprive purchasers "of the lands they had fairly bought; of suits in "consequence of which our ancient books are full: "and treasons were encouraged; as estates-tail were "not liable to forfeiture, longer than for the tenant's "life. So that they were justly branded, as the "source of new contentions and mischiefs unknown "to the common law; and almost universally con- "sidered as the common grievance of the realm. "But as the nobility were always fond of this "statute, because it preserved their family estates

" from forfeiture, there was little hope of procuring " a repeal by the legislature, and therefore by the " contrivance of an active and politic prince, a " method was devised to evade it.

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" What common recoveries are, both in their " nature and consequences, and why they are al- " lowed to be a bar to the estate-tail, must be re- " served to a subsequent inquiry. At present, I " shall only say, that they are fictitious proceedings, " introduced by a kind of *pia fraus*, to elude the " statute *de donis*, which was found so intolerably " mischievous, and which yet one branch of the " legislature would not then consent to repeal; and " that these recoveries, however clandestinely in- " troduced, are now become by long use and ac- " quiescence a most common assurance of lands; " and are looked upon as the legal mode of con- " veyance, by which tenant in tail may dispose of " his lands and tenements; so that no court will " suffer them to be shaken or reflected on, and even " Acts of Parliament have by a side-wind coun- " tenanced and established them."

Now read what Lord Bacon says about them:— " Entails of lands began by a statute made in Ed. " 1st's time, by which also they are so strengthened, " as that the tenant in tail could not put away the " land from the heir by any act of conveyance or " attainder; nor let it nor encumber it, longer than " his own life.

"But the inconvenience thereof was great, for "by that means the land being so sure tied upon "the heir as that his father could not put it from "him, it made the son to be disobedient, negligent, "and wasteful, often marrying without the father's "consent, and to grow insolent in vice, knowing "that there could be no check of disinheriting him. "It also made the owners of the land less fearful to "commit murders, felonies, treasons, and man- "slaughters; for that they knew none of these acts "could hurt the heir of his inheritance. It hin- "dered men that had entailed lands, that they could "not make the best of their lands by fine and im- "provement, for that none, upon so uncertain an "estate as for term of his own life, would give him "a fine of any value, nor lay any great stock upon "the land, that might yield rent improved.

* * * * *

"If the chief of a family, for any good purpose "of well seating himself, by selling that which lieth "far off to buy that which is near, or for the ad- "vancement of his daughters or younger sons, "should have reasonable cause to sell, this per- "petuity, if it should hold good, restraineth him. "And more than that, where many are owners of "inheritance of land not entailed, may during the "minority of his eldest son appoint the profits to "go to the advancement of the younger sons and "daughters and pay debts; but by entails and per- "petuities, the owners of these lands cannot do it,

" but they must suffer the whole to descend to the " eldest son, and so to come to the crown by ward- " ship all the time of his infancy."

Lord Bacon then asks this pertinent question, well worthy of consideration :—" Wherefore seeing " the dangerous times and untowardly heirs, they " might prevent those mischiefs of undoing their " houses by conveying the land from such heirs, if " they were not tied to the stake by those per- " petuities and restrained from forfeiture to the " crown, and disposing it to their own, or to their " children's good; therefore it is worthy of con- " sideration, whether it be better for the subject " and sovereign to have the lands secured to men's " names and bloods by perpetuities, with all the " inconveniences above mentioned, or to be in " hazard of undoing his house by unthrifty pos- " terity ?"

No one will deny now but that there is a great deal to be said against entails. But why reject this measure for the sake of great estates? I will defy any one to shew that the great estates can, by this measure, be broken up where they are entailed. When they are not entailed, in those very rare instances the owner, sharing in the prejudices of his class, will take care, by will, to prevent a division of his property. Private individuals complain most loudly of the system. A gentleman writing to me from Scotland, on the subject of entails, says:—

" Socially what a fearful curse this law has been. I am my-

self an instance and a victim of it. I have an estate of £1000 a-year. I may borrow money to improve it under the drainage act, but I would be doing so for my eldest son, the only one of my family who will be independent of me. I cannot borrow one farthing upon it to put my other sons out in the world; to make them merchants in England, farmers in Canada, or stock-holders in Australia. The consequence is that I have been obliged to send one of my sons a clerk to Sydney, where he gets 6s. a-day, while a mason gets 20s., another boy I had to send out as a midshipman, in that unfortunate ship * * * supposed, I fear too truly, to be lost at sea. I have thus lost my darling child, and am a broken-hearted most miserable man, and all because we have an accursed law that interferes with the affections, with the duties of a parent to his children, that impoverishes all, that does good to none. The prayer of a heart-broken man, the victim of this law which has murdered his child, is that you may succeed in your endeavours to expunge such a monstrous piece of legislation from the statute book, and thereby, I really believe, arrest the rush of population from these islands."

What a sad picture of a father's misery is this, and caused by entails.

Here is an extract from another letter I have received from an admiral, also in Scotland, and another victim to those laws:—

"Sir,—I have found from the newspapers of the day, that your Succession Bill has been lost by a considerable majority,—one of the arguments against the working of the bill, 'that the tenure of the land in this country had closely involved in it the performance of many and important duties.'

"As an Heir of Entail in possession of a Highland property under the Entail Act for Scotland, I would ask the Hon. Member, Is there any duty or purpose to which landed property is subjected more imperative than providing a suitable provision for the Widow and the younger Children of a deceased Proprietor, and the employing, during possession, of the labouring and pauper

poor in the improvement of the Land? Under Lord Aberdeen's Act, the widow, during her life, is amply provided for, and the education of the younger children can be carried on. In how many cases, where there are a numerous family, is the mother either removed by death before the father, or very soon follows him to the grave? In either case the family are left destitute. The world is wide enough for the sons to bustle through; but what is the case with daughters left to work for their bread, or to make what is called prudent marriages,—that is, becoming the wife of the first man that offers, and in too many cases the mother of all but paupers? Such cases come under our knowledge. And now, presuming upon your philanthropy on the subject of succession to real property, I will further take the liberty to intrude a few remarks on your valuable time.

"1. In my humble opinion the Law of Entail in England might be extended to Scotland without prejudice to any interest, with the exception of Legal Agents in Scotland.

"2. Without prejudice to the Heir of Entail in prospect, Lord Aberdeen's Act might be revised with the happiest effect, providing that the amount of the third part of the free rental of the property now provided as Widow's Jointure, together with amount of present provision for younger children, shall be at the disposal, by will and bequeathment, of the heir in possession, as the circumstances of the family may require, of which he is an impartial judge, equally interested in all.

"3. My own observation, and after much consideration that my own painful position with my eldest son has drawn forth, my opinion is, that Entailing Property under a rental of £1200 is entailing a curse on a family and tenants, particularly small tenants, a labouring part of them in connection with the property, and to none more so than the heirs in possession and in prospect where there is a family. At this moment a family of a friend of ours who, during his life, farmed his own lands, a strictly Entailed Highland Property in Argyllshire, rent about £600, left a family of six daughters and two younger sons. During their mother's life they kept together under tolerable comfort; she was, however, *lately* removed by death, leaving a daughter, an amiable, and

I may say accomplished, girl of little more than twenty years of age, with this heavy charge. The eldest son, a fine young man, in consequence of his father's position, required to borrow during his father's life on his prospects money, to purchase his commission and outfit; the consequence is, with all the inclination, he has little in his power. This is no uncommon case; on the contrary, independence or comfort in the families of Highland and Island proprietors is the exception; and the land that might be improved to great advantage is left waste. I will still further in my own case intrude upon your valuable time to state, that, when I succeeded the late . . . . . I found the greater part of the arable land, to the amount of about £700 annual rent, let by the year to small tenants—a farm renting at £60 having upon it four families, and on every quarter farm a house. This has been got the better of by degrees; but what I wish to bring before your notice as bearing on the subject of land succession is, that with the concurrence of the tenants, I employed an experienced Highland agriculturist, now one of the Commissioners under the Improvement Loan Act, to value the lands on leases of nine years. This required him to inspect the lands; and on giving in his report his remark was, that he had been inspecting the lands now to be let on lease, and that he would undertake, with an outlay of £3000, to increase my rental £500 annually. I met this as a mere remark, when he assured me it was his conviction, and that he would undertake it. So much for Entails."

It is certainly very remarkable that the statute under which entails are made, and which is acknowledged by lawyers to be so objectionable and so mischievous that no lawyer has proposed its repeal. I cannot help thinking that if Lord Campbell, instead of declaiming against this simple measure, would obtain the repeal of that statute, he would be far better employed. The constant practice had been for years to overrule a written law by a fiction, or

rather by a fraud, not very creditable either to the judges or the legislature. The only improvement in it is, a great one I admit, that what was done by a species of fraud, has for the last few years been done by a deed. Thus not a few consciences are saved. The effect is the same, the only difference is in the form; a man can now do by deed under a statute what he formerly did by an evasion.

There are not a few of the entailed estates which any one may observe are in the same state of unproductiveness, as Mr. Sismondi describes in his inimitable language, the machine for making stockings would be in, if forced to remain in the hands of a soldier, when he says:—

"Lorsqu'un militaire vient à hériter d'un outil à faire des bas, il ne le garde pas long-temps. Entre ses mains, cet outil demeurerait inutile pour lui-même et pour la nation; entre les mains d'un fabricant, il serait productif et pour la nation et pour lui-même: tous deux le sentent, et un échange est bientôt conclu. Le militaire reçoit de l'argent dont il saura faire usage, le fabricant entre en possession de l'outil qui lui est propre, et la production recommence. La plupart des lois de l'Europe sur les immeubles répondent à celle qui empêcherait le militaire de se défaire de l'outil dont il ne sait point faire usage."

The admirers of the system of encouraging great estates would do well to study its effects, and see whether it is not productive of many of the evils, which they assert to be caused by the opposite system in countries where entails are not allowed. They might compare, as I shall have occasion to do, France, perhaps, the worst farmed

country of small proprietors, with the worst and most wretched spot in all the world, the country of great proprietors—with Ireland, which misery has in consequence selected for her own peculiar abode—or they might take the best farmed district of great proprietors, the Lothians, and compare it with the best farmed district of small proprietors, the Pays de Waes. I could be able to shew I think beyond a doubt, that in each case the industry of the small proprietor will far exceed in productiveness the large estates of the absentee Irishman or the enterprising Scotchman. Adam Smith speaks of great estates among the discouragements of agriculture, he says:—

"To improve land with profit like all other commercial projects requires an exact attention to small savings and small gains of which a man born to a great fortune, even though naturally frugal, is very seldom capable. The situation of such a person naturally disposes him to attend rather to ornament which pleases his fancy than to profit for which he has so little occasion. The elegance of his dress, of his equipage, of his house and household furniture, are objects which from his infancy he has been accustomed to have some anxiety about. The turn of mind which this habit naturally forms follows him when he comes to think of the improvement of land. He embellishes perhaps four or five hundred acres in the neighbourhood of his house at ten times the expense which the land is worth after all his improvements; and finds that if he was to improve his whole estate in the same manner, and he has little taste for any other, he would be a bankrupt before he had finished the tenth part of it. There still remain in both parts of the United Kingdom, some great estates which have continued without interruption in the hands of the same family since the times of feudal anarchy. Compare

the present condition of these estates with the possessions of the small proprietors in their neighbourhood, and you will require no other argument to convince you how unfavourable such extensive property is to improvement. If little improvement was to be expected from such great proprietors, still less was to be hoped for from those who occupied the land under them."

Adam Smith, it is well known by every one who has studied his "Wealth of Nations," was opposed to the right of primogeniture. He says, "nothing "can be more contrary to the real interest of a "numerous family than a right which in order to "enrich one beggars all the rest of the children." Yet in spite of this and other remarks, Mr. M'Culloch, who presumes to edit his work, in his edition, page 555, says, "Primogeniture very ad- "vantageous to Modern Europe—its effects useful "to the characters of families—good results in "Scotland." This may be true or false; it may be Mr. M'Culloch's opinion, but it was not the opinion of Adam Smith, and ought not to have appeared in his works as if it were his.

I am forced to make some remarks about France, for everybody who speaks in favour of large estates, always speaks of France as if it was the only country in the world where there are small properties. They forget that there is a wide difference between these two countries, and that M. Léon Faucher says, "La France ne peut pas devenir l'Angleterre ni l'Angleterre la France." "It is from France," says Mr. J. S. Mill, "that impressions unfavourable to peasant "properties are generally drawn; it is in France

"that the system is so often asserted to have brought "forth its fruit in the most wretched possible agri- "culture, and to be rapidly reducing, if not to "have already reduced the peasantry, by subdi- "vision of land, to the verge of starvation. It is "difficult to account for the general prevalence of "opinions so much the reverse of truth. The agri- "culture of France was wretched, and the peasantry "in great indigence before the Revolution." M. Moreau de Jonnès (Elements de Statisque) says, the larger the properties, the less they produce; their masters are not like the small proprietor taught by necessity, and incessantly urged on by want. Thus when France was divided into 100,000 fiefs or church lands, each consisting of 500 hectares (a hectare is two and a half acres), famine every third year decimated the population. France, he says, since 1788, has increased in population more than a half, and only is able to feed her people now, because the Revolution caused the feudal and church lands to be divided forty times more than they were before, and the same soil produces fifty times more than it did sixty years ago. France owes to this division of the soil the progress she has made in her agriculture, and the power she now has of feeding twelve millions more people than she did formerly.

M. C. Dupin describes the state of France in the *glorious* reign of Louis XIV.; her agriculture could then scarcely provide a wretched subsistence

for fifteen millions on the same soil which now feeds with abundance nearly forty millions. Vauban described with a scrupulous faithfulness all that took place in many parts of France, and never has a more frightful picture desolated the heart of the friend of humanity. If one could doubt, M. Dupin goes on to remark, that it was possible the mass of the population could exist in so wretched a state of poverty, so very much removed from its present state, it is only necessary to look to those people who are even now in the same condition our ancestors were two or three centuries ago; "look," he exclaims, "to those—Irlandais que l'Angleterre habille avec les haillons de Londres, envoyés à pleins navires, et que portent tout déchirés des êtres qui s'abandonment à l'apathie de la degradation; voilà des exemples qui peuvent rendre croyable un état social qui pour nous, heureusement n'appartient plus à notre âge et s'éloigne avec rapidité dans le passé de l'histoire."

I should not have made these comparisons, were it not that every supporter of this measure is told to look at France, where properties are very much subdivided. It is not at all unreasonable to ask my opponents in their turn to look at Ireland, a country brought to misery by an opposite system—a country which could not descend lower in the scale of misery. France, before the Revolution, had suffered so much from the great properties that a compulsory sale was effected—Ireland had suf-

fered so much from the same cause, that the legislature, at the recommendation of Sir John Romilly, and without a revolution, forced a compulsory sale of the land there also, though in a mitigated form. It is well for us to know that what the French dread most is, to do any act which may make their country descend to the state of Ireland. In Ireland, the land of great properties, of small cultivation, and of the greatest misery, the population increased at a most rapid rate, until it got to a state beyond human endurance, when its numbers were suddenly reduced about a fourth. In France, the population has gone on steadily and regularly increasing, the morcellement has not by any means kept pace in proportion even with the slow increase of the population. It was predicted France would become the great pauper warren of Europe, that her people would from the fact of their becoming small proprietors, lose all forethought, and descend to the sad condition of the Irish peasants. M. Passy shows the very contrary has taken place. He proves that while the population in the towns in France has increased very rapidly, in the rural districts it has remained nearly stationary; he also shows, from tables of statistics, that owners of buildings of every kind excepted, (which, from 1826 to 1845, increased in numbers more than one million), there has been scarcely any increase at all in the number of landed proprietors. It is also a

curious fact, that including allclasses of proprietors of houses and land, the numbers of the smallest class of proprietors have, since 1835, increased only at the rate of 4 per cent. while the numbers of great proprietors have increased at the rate of 22 per cent. This at once shows, that even in spite of the compulsory division of land on the death of a proprietor, the properties are not getting smaller and smaller, but the reverse.

In France there was, for years, no other investment for the savings of the working classes than land, and the decrease of the number of proprietors of land is in consequence of other investments having been established. Now the humbler classes can invest in savings banks, in railways, in the Credit Foncier, or in the funds. The same desire for territorial aggrandisement seems to have seized the Frenchman with his small estate that also possesses our great proprietors here. The French peasant denies himself every comfort in order to save for the purpose of obtaining land, or of adding to his territory; this accounts for the very mean appearance of his dress. The English labourer, having no hope, and no possession besides his labour, marries early, increases the population, and being wretched, seeks comfort in drink; there is no greater stimulus to a rapid increase of population than misery. A man then loses all forethought, feels he cannot be more wretched, and seeks for a companion to share his misery.

M. Passy proves very clearly, that in countries under the system of large estates, there are small farms, and that under the opposite system of small estates, we find large farms. He says, almost the only productions of England are corn and meat, and that if a system of cultivation had been adopted which employed more labourers, England would not have been less prosperous, but that she would have enjoyed that prosperity without those inconveniences which tarnish its brightness, and leave the masses at the mercy of numerous sufferings on that very soil where the most enormous capital and riches are united.

M. Rossi in his lectures on Political Economy takes the same view, and on the subject of aristocracy says, it is quite a mistake to say that there is no longer a territorial aristocracy in France. If the number of great proprietors has diminished, their relative importance has increased; he then asks—

"Have the great proprietors learnt that in these present times, their title to the highest place on the social ladder will only be acknowledged in proportion as their manners are affable, their language simple and intelligible, and as they give repeated proofs of taking a hearty interest in the welfare of the public? Confidence, respect, patronage, are now no longer imposed by riches, birth, or rank; they must be earned by personal worth, by the sweat of the brow. Nevertheless, riches, birth, and rank, are always powerful auxiliaries; they are means which whatever one may say of them, derive their power from the depths of our nature, and history has never denied their importance."

Mr. Sismondi, taking again the same view,

mentions the following historical fact, which I am sure our modern aristocracy will do well to reflect on: he says—

"All the bodies of nobility who have been seen reduced to a degraded state of poverty, in the monarchies or principalities of Spain, Italy, Germany, or ancient France, have lived under the régime of eldership and of entails. The aristocracies on the contrary which have maintained themselves best in the world, in Greece, in the Roman Republic, at Florence, at Venice, in all the Italian Republics of the middle ages, in those of Switzerland and Germany, have been governed by the law of equal division of property, and this law has not prevented colossal fortunes from maintaining themselves there during several centuries, even where those fortunes were engaged in commerce."

In the following extract from General Canrobert's report to the Prince President, no later than 29th of April, 1852, he complains that socialism is established in certain departments, because there is but little morcellement. He says—

"Ainsi que j'ai eu l'honneur de vous en rendre compte, dans une de mes précédentes lettres, Monseigneur, j'ai été frappé de l'envahissement de l'esprit démagogique dans le centre de la France, et le socialisme m'a paru y avoir établi ses principales forteresses dans la Nievre, le Cher, l'Indre, l'Allier, la Creuse, et quelques localités de l'Auvergne et du Limousin. On en trouverait sans doute l'explication, pour les trois premiers départements au moins, dans le peu de morcellement de la propriété foncière, et dans cette commode mais bien dangereuse habitude que beaucoup de grands propriétaires ont, c'est, de ne point s'occuper euxmêmes de leurs vastes domaines, dout ils vivent éloignés, e de les tarer à bail à des entrepreneurs, souvent étrangers à la culture, mais toujours avides, n'ayant d'autre but que de faire rendre au sol le plus possible, sans s'inquiéter de l'appauvrir, et d' y exploiter in-

humainement les petits habitans de la campagne, qui ne possédant rien en propre, sont obligés de se plier à toutes leurs exigences."

In this part of France, the universal practice is, to give the portion the parent is allowed to dispose of, to the eldest son; because there, the old feudal prejudices exist. Marriage settlements are under the dotal system, and not under the "Communauté légale," as in the north.

The wife's property is tied up, feudality with respect to property prevails, as far as it dares, and the result is, that in those parts socialism is dreaded, because capital cannot be freely employed. Mons. Lavergne describes a part of France as bad as Ireland, "Rien n'y manque; ni l'absentéism ni le middleman; ni l'excès de la population rurale, ni la dette écrasante de la propriété, ni la misère des cultivateurs, ni l'épuisement du sol."

It is most truly remarked of France, that she has made great progress in her legislation, and set an example to the rest of Europe, by having codified her laws. The famous "Code Napoléon" when it abolished feudality, declared "Le territoire, libre comme les personnes." We, on the other hand, have made no progress; we have no code, we have not attempted the task; even the word code, is almost considered revolutionary. Instead of a Code, we have to put up with a confused pile of laws, scattered over about 100 volumes, without the least attempt at classification. Some of them written and lost sight of, others unwritten and forgotten, but either,

constantly liable to be turned up, to prove the glorious uncertainty of the law, the boast and pride of some of our lawyers. We have a written law for one class of property, and a sad confusion of written and unwritten law mixed together, for landed property. Justice depends, it is quite clear, upon an uncertainty; sometimes on the one law, sometimes on the other, and sometimes on both. When it depends on the written law, one statute will be found to disagree with another. It really seems as if it were desirable to keep legislation in its infancy. We find both lawyers and judges unable to agree, or to understand the subtleties of the law, while an unfortunate but most patient nation dreads that uncertainty, which justice requires should be certain.

When the laws are kept in this dreadful state of confusion, that the living law, that which is half alive and half dead, (but liable to be called forth at any time to do an injustice,) and that which is entirely dead, are all heaped together in a chaos; I think the public might at least expect an index to which they could refer. But there is nothing of the kind, and while scarcely any one can hope to escape acquiring some little disagreeable experience as to the consequences of law, it is rather a hard case, that it should be made almost impossible to know any thing about its great mystery. It may be said that there is a Commission appointed to revise the Statute Law; this cannot afford much comfort to any one who is acquainted with the

working of these Commissions in general, and with the working staff of this one in particular. They are, too often, only a civil way of procrastinating, and of perpetuating a great evil. In these days, the true diplomatic way of getting rid of a troublesome question, urged by what is considered an over-conscientious spirit, and at the same time, of assisting a needy, requiring, and persevering friend, is to appoint a paid Commission, and to take care to make it last. The public may be for a time successfully deceived, and persuaded that the evil will be inquired into; no doubt it will, but experience alas! teaches us, who are behind the scenes, that it will be with the view only of letting it remain. Now, as to the Statute Law Commission, I have no hope that any thing whatever will be done, when I look at the present composition of it, and I know not who can, when he is acquainted with all the circumstances.

The House of Commons voted a sum of money for this Commission; for a Chief Commissioner at a salary of £1000 per ann. and four sub-commissioners at £600 per ann. each for two years. The House was afterwards told, that Mr. Bellenden Ker was the Chief Commissioner, and Messrs. Anstey, Rogers, Coode, and Mr. Ker's pupil Mr. Brickdale, the sub-commissioners. But the House was not told that the three first sub-commissioners, were at the end of the first year discharged; it would almost seem from looking over the reports and the work they have prepared, they were dismissed for having

done too much rather than for any other fault, for if they had continued their labours in the way they began, the Commission could not possibly last long. The other sub-commissioner, Mr. Brickdale, in spite of the vote of the House of Commons, is made Secretary, and to whom? to his tutor Mr. Bellenden Ker, although the pupil himself acknowledges his "imperfect acquaintance with the Statute book." It is notorious that Mr. Rogers, whose knowledge of the Statute Law all admit, has in consequence of the treatment he has received, accepted some post in one of the colonies, and thus the country has lost the services of a man, preeminently qualified to revise the Statute Law.

Of Mr. Bellenden Ker already much is known; he does not seem to have done more for this Commission, than compile three contradictory reports, which give but little hope of much good being ever obtained.

O great design! if executed well
With patient care, and wisdom-temper'd zeal.
Ye sons of mercy, yet resume the search,
Drag forth the legal monsters into light,
Wrench from their hands oppression's iron rod,
And bid the cruel fear the pains they give;
Much still untouch'd remains; in this rank age
Much is the patriot's weeding hand requir'd.
The toils of law (what dark insidious men
Have cumbrous added to perplex the truth
And lengthen simple justice into trade)
How glorious were the day that saw these broke,
And every man within the reach of right!

Thomson.

He, I believe, was the last remaining member of the Criminal Law Commission, which was appointed twenty years ago, to digest the Criminal Law into one statute: I am only aware of one result; the law remains the same, but the nation has paid an enormous sum to the Commission.

Good laws, and above all, a good system of laws, founded upon a principle, are, any one would say, the essentials and the safeguards, for the progress of a civilized nation. As the nation progresses, the laws ought to adapt themselves, to the progress the nation makes. A bad and an unintelligible set of laws, may do well and be admirably adapted for a half civilized set of beings; it may be desirable for their rulers, for obvious reasons, to keep them in the dark as to what is the effect of a law. It may be well to retain feudal laws, for a people who are still groaning under the effects of feudality. But with us who are certainly among the most civilized nations of the world, can it be wise to retain any law, which was invented for the sole purpose of making feudality dominant, and of keeping one class distinct from the other? Can any one say that the severe laws and institutions of a Norman Conqueror, are adapted to a free people rapidly developing themselves in the great art of self government, under the smile of Queen Victoria? It is vain for any one to say that large properties are essential for the support of the throne; history will shew how such proprietors have combined together

against the interests of both the people and the sovereign. I boldly contend that a constitutional sovereign, is safer with a large body of small and industrious proprietors, than with a small body of large and luxurious ones.

I regret that I have been compelled to say so much about France, and I should not have felt it necessary to touch on the question of large or small properties, had not almost everybody alluded to the latter, as an objection to this Bill. The very little that is known in this country about the agriculture and state of France, is gathered from the laboured statistics of M. Mounier, enlivened by the eloquence of M. Rubichon. The former attempts to prove too much; he endeavours to establish it as a fact, that France in consequence of the morcellement is lost, her people starved, and that she will soon be blotted out from the list of nations. While M. Rubichon, reasoning from these statistics, labours to show that the only hope of safety is to return to the past, to the system of monasteries and feudality! England, according to them, has kept her high position among nations, solely because she has retained the institutions of the Norman conqueror. They admit that there is in England a great deal of misery, but let religious Protestants hear why; according to them we have this misery—because the convents have been closed, those great and holy retreats where the incessant practice of chastity and charity preserve society from excess of population!

The Free-traders might take alarm, when they are told by these writers, that the curse of England is its external commerce. Surely where we find such assertions, we must be very careful how we receive advice or information.

There can be no greater mistake than to imagine that France is the only country where small properties are to be found. Throughout the greater part of Germany, Holland, Switzerland, Norway, Denmark, Belgium, and North Italy, the land is possessed by small proprietors, and those are the countries where we find most happiness and comfort. In all those countries, Mr. Kay, in his "Social Condition of the People," says, every proprietor of land is allowed to sell or dispose of it as he likes, during his own life time; if the proprietor dies without having made a will, the law divides the land after his death, among his wife and all his children, instead of giving the whole estate to the eldest son; and he also says, under the German, French, and Swiss systems, a peasant proprietor never retains his land in his own possession, if he finds he cannot make a profit from it large enough to live upon. There are no regulations, no laws, no settlements, which prevent the peasant selling whenever he feels disposed to do so.

"When one travels through the whole of Switzerland," says Mr. Sismondi, "and through several parts of France, Italy and Germany, it is not necessary to inquire when looking at a piece of land, whether it belongs to a peasant proprietor or to a farmer,

holding it under a landlord. The land of the peasant proprietor is marked out by the care bestowed upon it, by the growth of the vegetables and fruits useful to a peasant's family, and by the neatness and perfection of the cultivation."

Mr. Laing speaking of Norway, says—

"The division of the land among children, appears not during the thousand years it has been in operation to have had the effect of reducing the landed properties to the minimum size that will barely support human existence. I have counted from five and twenty to forty cows upon farms, and that in a country in which the farmer must, for at least seven months of the year, have winter provender and houses provided for all cattle."

In Switzerland, every body knows the happiness and extraordinary industry of the people, arise from their being peasant proprietors.

Mr. Rau, quoted by Mr. Mill, speaking of the Flemish peasantry, says—

"The habit of dividing properties, and the opinion that this is advantageous, have been so completely preserved in Flanders, that even when a peasant dies leaving several children, they do not think of dividing his patrimony, though it be neither entailed nor settled in trust; they prefer selling it entire and sharing the proceeds, considering it as a jewel which loses its value when it is divided."

The Pays de Waes, originally a tract of blowing sand without any vegetation, has been by the industry and perseverance of the small proprietors, converted into one of the most fertile gardens of Europe. It may appear astonishing to an English agriculturist, to find that on that poor sand, the occupier of only 10 or 12 acres should be able to maintain four or five cows, and that the average quantity of milk which a cow gives when fed in the

stall, greatly exceeds that of our best dairy farms. These facts are clearly stated in the treatise on Flemish husbandry, in the Library of Useful Knowledge.

Mr. Laing* makes an able comparison between an estate in Scotland, let to tenants of capital and skill, and "all in best East Lothian trim," with an equal tract of land in Belgium. He supposes it to be an estate of £4000 a-year:—

"This," he says, "would be about 1600 acres of land, let on an average at fifty shillings per acre, and divided into eight farms of the average size of two hundred acres, and of the average rent of £500 each. This is below, not above, the average size and rent of arable farms in the best and most improved districts of the south of Scotland. Now the farmer of 200 acres will not keep so many as ten farm-servants all the year round, will he? Four, and a boy and a girl would, perhaps, be nearer the number; but at some seasons, he will have more, and other seasons, fewer hands. Suppose he employs occasionally in the course of the year, as at harvest time, turnip hoeing, and such seasons, as much labour as might amount to the entire subsistence of ten hands all the year round, and then we have only 80 people kept on this estate of £4000 a-year, and these mostly simple wandering men, or girls, without any property but this half-year's fee as farm-servants, and without house or home, but shifting from one farmer's *bothy* to another every half-year, and living in these *bothys* with less of domestic habits, ties, or comforts, than the farmer's pigs.

"Now take under your eye a space of land here in Flanders, that you judge to be about sixteen hundred acres. Walk over it, examine it, every foot of the land is cultivated, dug with the

* Observations in Europe.

spade or hoe, where horse and plough cannot work, and all is in crop, or in preparation for crop. In our best farmed districts, there are corners and patches in every field, lying waste and uncultivated, because the large rent-paying farmer cannot afford hired labour, superintendence, and manure, to such minute portions of land and garden-like work, as the owner of a small piece of land can bestow on every corner and spot of his own property. Here the whole 1600 acres must be in garden farms of five or six acres; and it is evident that in the amount of produce from the land, in the crops of rye, wheat, barley, rape, clover, lucerne, and flax for clothing material, which are the usual crops, the 1600 acres under such garden culture, surpass the 1600 acres under large farm cultivation, however good, as much as a kitchen garden surpasses in productiveness a common field. On the 1600 acres here in Flanders, or Belgium, instead of eight farmers with their eighty farm-servants, there will be from 300 to 320 families, or from 1400 to 1600 individuals, each family working its own piece of land, and with some property in cows, sheep, pigs, utensils, and other stock, in proportion to their land, and with constant employment, and a secure subsistence on their own little estates.

"This is surely a happier social condition than that of the population of Scotland, with its five or six thousand great land-owners, its flourishing large farmers, its wealthy master-manufacturers, its thriving merchants, agents, lawyers, bankers, and all the population, whether connected or not connected with land, below those few thousands of individuals earning a scanty and precarious subsistence, and always on the verge of destitution and misery. It is not that a duke has £50,000 a-year, but that a thousand fathers of families have £50 a-year, that is true national wealth and well-being."

Even in Austria the importance of small proprietors is acknowledged, as well as in Russia. M. Gustave Dupuynode, in his work on la Propriété Territoriale, says—

"The detention of land by the husbandmen, has appeared in

several countries to be of sufficient importance to require protective laws for this order of things. Such a law, remarkable above all on account of the Government from which it emanates, prevails in the German provinces of the Austrian monarchy. There the ancient contract between the lord and the peasant, has been declared irrevocable, at the same time the greatest part of his services have been commuted for a yearly payment in money, or in produce, in such a manner as to become perpetual. After having thus made peasants, proprietors, the law in order to prevent their being dispossessed to their prejudice, has prohibited the lords from repurchasing any lands held in socage. The Austrian Government, that representative of Eastern immobility in Europe, has felt that the best security for the stability of its social and political organization rests in the division of landed property."

Prussia has also derived the greatest benefit from the edict of 1811, which broke up the great estates, and those which remain are easily distinguished from the small ones by the superior cultivation of the latter. Mr. Kay very truly remarks, that—

"In England it is generally difficult, if not impossible, to protect the gardens, orchards, and fields, in the neighbourhood of our towns from trespassers and thieves. In Germany and Switzerland, this difficulty is scarcely known; property is much more secure, because it is much more diffused. I often remarked to my German and Swiss fellow travellers, on passing the orchards and gardens undivided from the road by even a hedge, if these trees were in England, they would be surrounded by a high wall; why is such a defence unnecessary with you? The answer invariably was, with us, almost every one is either a possessor of property, or has some relation or friend who is a possessor; and whichever is the case, he feels himself equally interested in discouraging trespassers and robberies, and in defending the rights of his neighbours, that they may likewise be induced to defend the rights of himself or his friends."

We may find the same good effects arising from

a greater subdivision of the soil, also, in our own possessions, if we turn to the Channel Islands; there again the greatest industry and comfort, are the consequences of that system.

Mr. Thornton in his Plea for Peasant Proprietors, states that thirty shillings an acre would be thought in England a very fair rent for middling land, but in the Channel Islands it is only very inferior land that would not let for at least £4 an acre. No one, I believe, denies that the cultivation in these islands, is far superior to the cultivation here. Mr. Thornton says in Great Britain there is only one cultivator to twenty-two acres, while in Guernsey there is one to seven acres. He shows that the average produce per acre is greater in both Jersey and Guernsey, although the soil is in no respect better than it is here, and in Jersey decidedly inferior; and yet, "the law of inheritance, he says, requires land to be divided among all the children of the last owner, daughters as well as sons, though it treats the former in general more liberally than the latter, and permits the eldest son, besides sharing equally with his brothers, to take in addition his father's principal dwelling-house, and about 16 perches of ground adjoining it." He has shown clearly in his work, that not even in England is so large a quantity of produce sent to market from a tract equally limited in extent as from the island of Guernsey.

"The satisfactoriness," he continues, "of the "condition of the cultivators is apparent to every "observer. The happiest community, says Mr. Hill,

"which it has ever been my lot to fall in with, is to "be found in this little island of Guernsey. No "matter, says Sir George Head, to what point the "traveller may choose to bend his way, comfort "every where prevails. Literally, in the whole is- "land, with the exception of a few fishermen's huts, "there is not a dwelling so mean as to be likened "to the ordinary habitation of an English farm la- "bourer." While in England our landed proprietors have for years complained of the superabundant population, which has increased in the rural districts in proportion to its misery, and in proportion I may add in many instances to the magnitude of the estates on which it exists; and while pauperism has become most alarming, we find from the same authority that in Guernsey beggars are utterly unknown. Pauperism, able-bodied pauperism at least, is nearly as rare as mendicancy. Great estates have certainly not produced the same good effects here, that small ones have there. One of the chief reasons for the abolition of the law of settlement, and removal of the poor, is not only to emancipate the labourer, but to put a stop to that most cruel custom, which prevails on the estates of many great landed proprietors, of ejecting the population, and of destroying their cottages. We find that there is more crime in proportion to the population in the rural districts, than in the manufacturing towns, and that their dwellings are most disgraceful, and worse even than in the towns. These facts are all fully gone

into, and proved by Mr. Kay. The landlords have persuaded themselves to look upon it as a necessary state of things, because it has existed so long, while the poor have sunk below complaining, and adapted themselves to wretchedness. It is a remarkable anomaly that while emigration has gone on to a fearful extent in England, and forced clearances of the population, amounting to millions, have been effected in Ireland and in Scotland, in consequence of too great estates, upwards of 11,000,000 acres of land should remain uncultivated, which are capable of cultivation. It does certainly seem strange that such enormous tracts of land should remain uncultivated, in a country abounding with capital, and with a population obliged to fly elsewhere for the means of subsistence, and for no other reason than because the soil is possessed by a smaller number of proprietors than in any other country in Europe.

Mr. Coleman, the intelligent American traveller, speaks of Great Britain in these words:—

"With an increasing national debt, whose payment is perfectly hopeless, a weight of taxation the subject of universal complaint, millions upon millions lavished upon her armies and navies; workhouses and prisons filled to repletion; thousands and hundreds of thousands upon the verge of starvation; and in the two great islands, resplendent with the brightest lights of civilization, more than thirteen millions of acres of unoccupied land, and even her cultivated soil, with an improved agriculture, capable of sustaining in plenty three times the number of those who now draw nourishment from her breast. . . . . Are not these

monstrous facts; deeply distressing to philanthropy; deeply wounding to human pride. . . . . The efforts of government then should be directed to give every facility and protection to this art or pursuit; to render land accessible; to break up those tenures under which by various provisions, worthy only of a barbarous age, land is kept out of cultivation."

Merle D'Aubigné, in his "Recollections of Germany, England, and Scotland, 1848," gives the following graphic description:—

"These large properties of the nobility, which sometimes entirely exclude the small proprietors, produce a melancholy impression. When I have been walking in one of those beautiful English parks, so fresh and verdant, so dotted with stately trees, so charming with the graceful undulations of the soil and with their beautiful lakes, I occasionally felt an indescribable sadness. I saw nothing but foliage on foliage; the only sign of life was the cawing of the rooks, necessary inhabitants of these velvet glades. 'Oh! who can restore me,' thought I, 'those smiling habitations, the delightful hamlets, the lively villages of my own Switzerland.' I gazed anxiously around, trying to discover among the trees, the appearance of a roof; and could I but perceive the slightest trace I ran forwards that I might see some peasant, man or woman—some symptom of life! This is still more striking in Scotland. You may travel for miles through the Highlands, without meeting other inhabitants than thousands of sheep, feeding in solitude. 'Were I in Switzerland,' I said to myself, 'these hill-sides would be divided among several small owners; here would be a farm, there a châlet, and everywhere the animation of a free people.' Yet there are some exceptions. When I drew near that charming site at the extremity of Loch Tay, close by the romantic Kenmore, on which rises the stately palace of the Breadalbanes (many Genevese will remember that the present Marquis of Breadalbane, then Lord Glenorchy, visited their city twenty-five or thirty years ago), I was delighted to find the country dotted with pretty cottages, covered

with roses, and to see healthy, ruddy children playing before their smiling homes. It was like an oasis, created by the benevolence of a Christian lord. But in general there is a desert. It is not long since, instead of the system of small farms, the landlords have substituted large ones, and the unfortunate small farmers, finding themselves outbid, have been obliged to forsake their beloved mountains, and emigrate either to the antipodes, to New Holland, or to throw themselves into the ever open and ever devouring gulf of the manufacturing towns of England or Scotland. It often happens that one lord is the sole proprietor of a whole county, from one sea to another; and he can, as has often been done within these few years, refuse the Christians who inhabit his estate a site of thirty feet square, in which they may worship God.

"It would be a glorious task for the statesmen who preside over the destiny of Britain, and whom no difficulties can deter, to seek some legal means of establishing small properties in Scotland, and delivering the country from the oppression of a few lairds."

If we study ancient history we find that the decline of the Roman empire is to be attributed to the land being owned by a few, and cultivated by slaves. Mr. Pashley in his "Pauperism and Poor Laws" says, "Instances are not wanting in Imperial "Rome, in which districts even larger than the "county of Sutherland, became a single estate; "and thus it happened that the Roman aristocracy "never farmed on so extensive a scale as during "the long period of the decline of the empire." We learn from Pliny that it was the existence of large properties that destroyed Italy and the provinces. "Latifundia perdidere Italiam, imo et "provincias." The chief stages of the same progress are indicated by passages of Livy, Sallust, *Tacitus*, and Appian.

Bernardin de St. Pierre, quoted by Mons. Villemain, has this passage in his work:—"Plutarch "said, that in his time under Trajan 3000 soldiers "could not be levied in Greece which had formerly "supplied such numerous armies, and that one "might sometimes travel there a whole day, without "meeting anybody in the roads except some shep-"herds. The reason is, that land in Greece had "almost all fallen into the hands of great pro-"prietors, &c. &c.

"Great proprietors at the same time destroy "patriotism in those who have everything, and in "those who have nothing. Xenophon said, that "sheafs gave to those who grew them, the courage "to defend them. They are in the fields like a "prize, in a game for the conqueror."

Some, however, who look back to the feudal times with reverence may say, that England was more prosperous when the lords of the soil had more power, and the people had comparatively none, and scarcely any land. Professor Creasy says:—

"The misery which the country suffered during "the reign of Stephen, must fearfully have reduced "the number of human beings in the land. No "description of that misery can be more emphatic "than that which the old chroniclers give. They "tell us, The nobles and bishops built castles, and "filled them with devilish and evil men, and "oppressed the people cruelly, torturing them for "their money. They made thousands die of hunger.

"They imposed taxes upon towns, and when they "had exhausted them of everything, set them on fire. "You might travel a day and not find one living "man in a town, or one cultivated field in the "country. The poor died of hunger, and they who "were once men of substance, now begged their "bread from door to door. Never did the country "suffer greater evils."

Much valuable information is to be gathered from the study of old Acts of Parliament, they form some of the best materials for history, and make us well acquainted with the vices, peculiar to each age. These old Acts are in general only studied by lawyers, not for historical information, but with the view of proving how a particular Act, may meet a particular case. The preambles, which are most curious, and frequently admirably written, describe to us what were the manners of the times. With this view I have looked into the Statute Book, and I certainly do find one complaint, one sad tale which seems always the same, always being legislated for, but still remaining untouched:—the evil consequences which arise from too great an accumulation of land. In the reign of Henry VII., an act was passed to prevent the pulling down of Farm Houses. There can be no doubt that the evil had been greatly felt, or the lords of the soil would not have been prevailed upon to pass an Act which, on the face of it, interfered with themselves, and prevented them "doing as they liked with their own."—This Act,

the 4th of Henry VII. c. 19, has the following preamble.

"The King our sovereign Lord having a singular pleasure above all things to avoid such enormities and mischiefs as be hurtful and prejudicial to the common weal of this his land and his subjects of the same, remembereth that among other things great inconveniences daily do encrease by desolation, and pulling down and wilful waste of houses and towns within this his realm, and laying to pasture lands which customably have been used in tillage, whereby idleness, which is the ground and beginning of all mischiefs, daily doth encrease. For where in some towns two hundred persons were occupied and lived by their lawful labours, now there are occupied two or three herdsmen and the residue fall into idleness. The husbandry, which is one of the greatest commodities of this realm, is greatly decayed, churches destroyed, the service of God withdrawn, the bodies there buried not prayed for, the Patrons and Curates wronged."

It then compels the owners to maintain the houses and buildings thereon necessary for tillage.

Another act imposes a penalty for taking more than one farm in the Isle of Wight, and complains that the Isle cannot be kept and defended unless this remedy be applied.

4 Henry VII., c. 16.

The *Penalty of taking more Farms than one in the Isle of Wight.*

"Forasmuch as it is to the King our Sovereign Lord, great surety, and also to the surety of this Realm of England, that the Isle of Wight, in the County of Southampton, be well inhabited with English people, for the defence as well of his ancient enemies of the Realm of France, as of other parties, the which Isle is lately decayed of people, by reason that many towns and villages have been beaten down, and the fields ditched and made pastures for beasts and cattle; and also many dwelling-places, ferms, and

ferm-holds have of late time been used to be taken in one man's hold and hands, that of old time were wont to be in many several persons holds and hands, and many several households kept in them, and thereby much people multiplied, and the same Isle thereby well inhabited, the which now by the occasion aforesaid is desolate and not inhabited, but occupied with beasts and cattle, so that, if hasty remedy be not provided, that Isle cannot be kept and defended, but will be open, and ready to fall to the hands of the King's enemies, which God forbid: For remedy whereof it is ordained, enacted, and established, by the assent of the Lords spiritual and temporal, and the Commons, in the said Parliament assembled, and by authority of the same, That from henceforth, no manner of person, of what estate, degree, or condition he is, or shall be, take any several ferms, more than one, of any manors, lands, and tenements, parsonages or tithes within the said Isle, whereof the ferm of them altogether shall not exceed the sum of x marks yearly."

The sixth of Henry VIII. enacts that—

"Whosoever decayeth any town or house of husbandry, or doth convert tillage into pasture shall forfeit to the lord of the fee half of the profits thereof."

The very next year another act is passed,—the seventh of Henry VIII.; we find the same tale, the same wrong crying out for redress, but the cause remaining unheeded, and making, as I shall show presently, future legislation and other attempts at remedies necessary. The preamble runs thus:—

"The King, our Sovereign Lord, calling to his most blessed remembrance that where great inconvenience be and daily increase by desolation, pulling down, and destruction of houses and towns within this realm and lying to pasture land which customary have been manured and occupied with tillage and husbandry, whereby idleness doth increase, for when in one town two hundred person

—men, women, and children—and their ancestors, out of time of mind, were daily occupied and lived by sowing of corn and grains, breeding of cattle, and other increase necessary for many's sustenance, ... whereby husbandry, which is the greatest commodite of this realm for sustenance of man is greatly decayed, churches destroyed, the service of God withdrawn, Christian people therein buried not prayed for, the patron and curates wronged, cities and market towns brought to great ruin and decay, necessaries for many's sustenance made scarce and dear, the people are minished in the realm," &c.

It then enacts that all tillage lands turned to pasture shall be restored again to tillage.

Idleness, then, throughout these acts is complained of, and it is stated pretty plainly that it arises out of the conduct of the landed proprietors, and that conduct is, we may not unfairly infer, occasioned by the too great accumulation of land.

The first of Edward VI. has the following remarkable preamble :—

It begins at once with—

"Forasmuch as idleness and vagabondry is the mother and root of all thefts, robberies, and all evil acts and other mischiefs, and the multitude of people given thereto hath always been here within this realm very great and more in number (as it may appear) than in other regions, to the great impoverishment of the realm, and danger of the King's highness subjects ; the which idleness and vagabondry, all the King's highness noble progenitors, kings of this realm, and this high court of Parliament hath often and with great travel gone about and assayed with Godly acts and statutes to repress ; yet until this our time it hath not had that success which hath been wished, but partly by foolish pity and mercy of them which should have seen the said Godly laws executed, partly by the perverse nature and long accustomed

idleness of the persons given to loitering, the said Godly statutes hitherto have had small effect, and idle and vagabond persons, being unprofitable members or rather enemies of the commonwealth have been suffered to remain and increase, and yet so do, whom if they should be punished by death, whipping, imprisonment, and other with corporal pain, it were not without their deserts, for the example of others, and to the benefit of the commonwealth: yet if they could be brought to be made profitable and do service it were much to be wished and desired."

It enacts:—The Justices shall cause the poor wretches found loitering "to be marked with a hot iron in the breast, the mark V.," and other penalties.

Here idleness is described as the mother and root of all thefts, &c. The former act tells us whence it proceeds, but it is left for this preamble to inform us that "the multitude of people given to theft, &c. is more in number than in other regions." The feudal system and the Norman institutions created the evil by making it the essential part of their policy that land should be owned and kept in the exclusive possession of the few. Yet although the effects are incessantly and in every way attacked, the real cause never is touched.

To get rid of this dreadful scourge idleness, every attempt was made, except the right one. At one time, the rights of the owners of the land were attacked; at another, the unfortunate victims of a wretched system, unable to help themselves, were to be cruelly persecuted, for crimes which it had become necessary for them to commit.

The real cause is always indirectly alluded to, and in such a way that every one must see, the evil arose out of the too great accumulation of land as a part of the feudal system.

The evil had got to such an extent that it was necessary still further to encroach upon the privileges of the great landowners, and an act was passed in the twenty-fifth year of Henry VIII. to limit the number of sheep any one might keep, and it also enacts that no man shall take above two farms. The preamble of this act again describes forcibly the misery of the country, and it also complains of "those greedy and covetous people" accumulating and keeping in their hands, such great portions of the lands of the realm from the occupying of the poor husbandmen.

The preamble of this act is well worthy of attention.

"*Concerning the Number of Sheep one may keep.*

"Forasmuch as divers and sundry persons of the King's subjects of this realm, to whom God of his goodness hath disposed great plenty and abundance of moveable substance, now of late within few years have daily studied, practised, and invented ways and means how they might accumulate and gather together into few hands as well great multitude of farms as great plenty of cattle, and in especial sheep, putting such lands as they can get to pasture, and not to tillage, whereby they have not only pulled down churches and towns and enhanced the old rates of the rents of the possessions of this realm, or else brought it to such excessive fines that no poor man is able to meddle with it, but also have raised and enhanced the prices of all manner of corn, cattle, wool, pigs, geese, hens, chickens, eggs, and such other, almost double

above the prices which have been accustomed; by reason whereof a marvellous multitude and number of the people of this realm be not able to provide meat, drink, and clothes necessary for themselves, their wives, and children, but be so discouraged with misery and poverty, that they fall daily to theft, robbery, and other inconveniences, or pitifully die for hunger and cold; and as it is thought by the King's most humble and loving subjects that one of the greatest occasions that moveth and provoketh those greedy and covetous people so to accumulate and keep in their hands such great portions and parts of the grounds and lands of this realm from the occupying of the poor husbandmen, and so to use it in pasture, and not in tillage, is only the great profit that cometh of sheep, which now become to a few persons hands of this realm; in respect of the whole number of the King's subjects, that some have four-and-twenty thousand, some twenty thousand, some ten thousand, some six thousand, some five thousand, and some more, and some less, &c."

It defines the age at which a lamb is to be deemed a sheep, and enacts that no manner of person shall take above two farms.

Not only is this act remarkable as shewing the state of the country at the time it was passed, but it also shews us the state of our legislation at this very day. This act in common with a great number of others equally inapplicable to the times we live in, is actually in force now, and belongs to that class so well described by Lord Bacon as "sleeping and not of use but snaring and in force." Surely the Statute Book is sufficiently voluminous without our retaining statutes of this kind, and justice is quite uncertain enough without our leaving it to a jury to determine whether they will find a man guilty under these obsolete statutes. Upon such an

indictment, no doubt judge and jury would in almost every case unite in preventing a conviction and in defeating the law, but when the criminal is obnoxious to the jury, he can be punished.

Daines Barrington, in his Observations on the Ancient Statutes, says, "There was an indictment in Cardiganshire within these twelve years upon this obsolete and injudicious statute." I certainly do intend to exert myself to get the Statute Book purged from such mischievous nuisances, and hope that I may not then be met with the cry of danger, as I generally am in most of my attempted reforms. Had this act been applicable to Scotland, it is not impossible that a Sutherlandshire jury would have found several years ago its greatest landowner (not the present) guilty, when several thousand inhabitants were forcibly expatriated, in order to convert a whole county into one vast sheep walk. In Sutherlandshire there was an instance of a late great proprietor doing what was so dreaded in the time of Henry VIII., the pulling down villages and turning a population adrift by converting a district into pasture.

But to return again to this eventful reign, and to the evils which arose from large properties at that time, Mr. Brodie in his learned introduction to the History of the British Empire, remarks, that "pro-
"prietors of land found pasturage more profitable
"than tillage, and quickly laid down their lands.
"This greatly augmented the misery of the lower

" ranks; for as pasturage does not require a third " of the hands necessary for tillage, the superfluous " population was dismissed and enlarged the num- " ber of destitute. Without country labour—pre- " cluded the towns,* and prevented from deriving a " subsistence by any species of manufactures—a " great part of the people were reduced to the last " resort of begging, theft and robbery, and daily " perished or suffered for the irregularities to which " they were driven." . . . . . " The country " swarmed with beggars, thieves and robbers; " despair drove the wretched to repeated insurrec- " tions which threatened the overthrow of all the " established institutions of society. The husband- " man was plundered, the magistrate resisted, and " the most cruel sanguinary laws failed to terrify " men into submission."

While the country groaned under this wretchedness the Reformation was effected; although it undoubtedly caused much lasting happiness, and was the greatest step to progress and civilization, still at the moment it greatly aggravated the misery of the humbler classes. The lands which belonged to the religious houses were most extensive, and their

* " Strange it is, that this did not proceed entirely from the influence of the towns which were naturally actuated by the principle of monopoly, but from the mean selfishness of owners of land, who while they mercilessly dismissed their dependents, were yet afraid that the influx of inhabitants into towns, might raise the wages of country labour."—*Brodie's History.*

tenants, generally the most independent and comfortable of their class, were now forced to quit their holdings. Their estates were made over for particular purposes to influential personages who were already large proprietors. The King having first satisfied himself with the plunder, or as Burke so bitterly described it, "The lion having sucked the blood of his prey threw the offal carcase to the jackall in waiting." Thus the misery, already great, was fearfully increased, and a large portion of the land of the kingdom accumulated in hands which lost nothing of what they grasped.

No less than 72,000 rogues were executed in this reign alone. Harrison, a writer of that day, remarks about begging, that though "the punishment be very sharp, yet it cannot restrain them from their gadding, wherefore the end must be martial law." It was not to be wondered at then, that in this state of things the Poor Law should have been first conceived. The Legislature having done all it could to create large and powerful owners of the soil, and to increase their possessions, was naturally enough expected to make a provision for those who could not find either subsistence or employment, in consequence of the enormous size to which the estates had grown. The Poor Law Act has now increased mightily in bulk, and consists of no less than 162 acts, scattered through the statutes at large, from the reign of Elizabeth to this time.

In the reign of Charles II. a great encroachment

was made on the liberties of the people by the 14th Car. II. c. 12; this act destroyed the right of locomotion and free choice of domicile of the great bulk of the English people—an act which can be traced as a necessary part of the system of great estates, which has been encouraged for so many centuries. The population, when it passed, in 1662, amounted to less than five millions. The legislature now, with our vast population, are seriously proposing to repeal the whole of the oppressive laws relating to settlements. It is a well known fact that the large landed proprietors have in close parishes destroyed cottages and even villages, and thus oppressed the working classes, and added to their misery. When these laws are abolished, the great proprietors having to pay for the maintenance of the poor, whether residing on their estates or not, will find it their interest to make them more comfortable, and to allow them the privilege of residing near their work. They will, it is to be hoped, then feel the labourer is no longer a disgrace or a nuisance on their estates.

We have seen Ireland, after incessant legislation, also reduced to such a state as to be obliged to have Poor Laws and Union workhouses, forced upon her.

In 1840 an Act was passed to assist needy landowners, which was made necessary by the evils resulting from an accumulation of landed property. The preamble speaks for itself: "Whereas "much of the land in England and Ireland would

"be rendered permanently more productive by "increased draining, and nevertheless, by reason "of the great expense thereof, Proprietors having "a limited interest in such land are often unable "to execute such draining: And whereas it is ex- "pedient, as well for the more abundant production "of food as for the increased employment of farm- "ing Labourers, and the extended Investment of "capital in the permanent improvement of the soil, "that such properties should be relieved from this "disability, due regard being had to the interests "of those entitled to the remainder." This, be it observed, was passed under the exploded protective system; it is a fair way of meeting an evil, and of enabling the proprietors to borrow money from private individuals for the purpose of improving their land, they being unhappily so fettered that they could not borrow without it. We may infer from an act of this kind being necessary, how many estates have been for years left in an unimproved condition, and how many labourers have been brought to destitution from want of employment, in consequence of the proprietors being only nominal owners. The owner of an estate which is entailed has always been placed in a most trying situation. Affection towards all his younger children commands him to scrape all he can off the estate, to beggar it as it were, for it is the only way left for him to make a provision for them, the eldest son being disproportionately provided for; while a sense

of duty to the estate and to those dependent upon it, also demands of him to improve his estate, when by so doing he knows he is robbing his other children.

In 1846 a stronger case was made out for legislative interference; borrowing of private individuals was not sufficient, and so the nation was called upon to advance a loan to the landowners, to promote among other things "the employment and effectiveness of the agricultural labourer," as the Preamble will shew:

"9° AND 10° VICTORIA, CAP. 101.

"An Act to authorise the advance of Public Money to a limited Amount to promote the Improvement of Land in Great Britain and Ireland by Works of Drainage."

"Whereas the Productiveness and Value of much of the Land "in Great Britain and Ireland are capable of being greatly in- "creased by Drainage, and the Extension of the Operation of "Drainage is calculated to promote the Employment and Ef- "fectiveness of agricultural Labour, and tends also to prevent "Disease, and to improve the General Health of the Com- "munity: And whereas it is expedient to facilitate Works of "Drainage by Advances of Public Money to a limited Amount "on the Security of the Land to be improved."

I have now I think shewn, how for centuries we have been forced incessantly to legislate on account of the deranged and disordered state of society, occasioned by the encouragement which has been given to accumulate land. I feel that there is no reason to object to this measure lest it should tend to increase the number of landed proprietors; if it did do so, if it should cause a decrease in the size of

some of the already overgrown estates, it will confer a greater benefit than even I expect from it. I have already shewn that it cannot interfere with entails; that entails are an evil, and that this measure ought not to be refused from an imaginary fear it might tend to correct, what seems to me so great an evil.

I ought to mention that in Scotland, where it is well known the most unsatisfactory laws relating to entails are in force, even there a far more just and better law prevails with regard to the real estates of those who die intestate.

If the heir takes the real estate of the intestate, he cannot as he does here take a share of the personal estate also. He has the privilege of electing whether he will take the real estate, or whether he will share the personal estate; if he should prefer the latter, the real estate is then thrown into the common fund.

There are also some very just rules with regard to marriages, when no marriage settlement is made. A friend of mine, a Scotch member and a distinguished advocate, has in the kindest manner given me a most instructive paper on this subject. He shows at a glance with great clearness, what are the differences between the law of England and that of Scotland in cases of intestacy. I am sure the following will be read with much interest, particularly by Scotchmen:—

"Where a party in Scotland not having either

" wife or children dies intestate, leaving only move-
" able estate, that estate is divided equally among
" his nearest of kin of the same degree, to the ex-
" clusion of the children of any one of that degree
" who may have predeceased him; differing in this
" respect from the more equitable rule of the law of
" England. Thus, for example, if he be survived
" by three brothers and sisters, while a brother or
" a sister may have predeceased him leaving chil-
" dren, his whole moveable estate will be divided
" into three parts, each of the surviving brothers or
" sisters taking a share, while the issue of the pre-
" deceasing brother or sister, are excluded absolutely
" from all partition.

" If, again, he leave a wife but no children, and
" the ordinary rule of law have not been superseded
" by the provisions of a marriage contract, the wife
" takes one half of the moveable estate, while the
" other half falls to the nearest of kin, according to
" the rule above mentioned.

" If he leave both a wife and a child or children,
" the moveable estate is divided into three equal
" shares:— One of these goes to the wife; another
" constitutes the children's 'legitim' or 'portio
" legitima'; and the third, which receives the
" name of 'dead's part,' is distributed according to
" the rule already mentioned, with reference to the
" whole moveable estate when the deceased had
" neither wife nor children.

" In this case, where the party died intestate,

" the children would take two-thirds—the one-third
" as legitim, and the other third as nearest of kin,—
" by equal partition among them all; but as regards
" the third termed the 'dead's part,' the deceased
" might dispose of it by will as he pleased; while
" he cannot test upon the legitim or the widow's
" share, so as to disappoint, by Will, the children
" or the widow of their respective third. His
" *debts*, however, must be deducted in ascertaining
" the free residue which is to be divided into these
" three shares. The legal right of the children
" (as well as that of the wife) may be excluded, by
" express provisions in the contract of the marriage
" of which they are the issue.

" Where the estate of a deceased consists both of
" heritage or realty, and of moveables or personalty,
" the heritage falls exclusively to the heir-at-law,
" who, if he be likewise the *sole* nearest of kin, will
" also take the whole of the moveable estate falling
" to nearest of kin. If, at the same time, an only
" child, he will also be entitled to the whole of the
" legitim. If the heir be, on the other hand, one
" of several nearest of kin, he, taking the heritage
" as heir, is not entitled to any share of the move-
" able estate falling to nearest of kin, which is
" divided among the others to his exclusion. He
" has, however, a privilege termed the right of col-
" lation, by virtue of which he may throw the
" heritage into a common fund, with the moveable
" estate falling to nearest of kin, and claim an equal

"share of that common fund, which then becomes "divisible equally among *all* the nearest of kin, "including him.

"The heir though taking the heritage is not "thereby excluded from his share of legitim as one "of the children of the deceased.

"While both the heritable and the moveable "estate are available to the creditors of the deceased "for payment of their debts, in settling the incidence "of the burden, as in a question between the heir "and the executors, the rule is that all debts "secured, by heritable bond or otherwise, on the "heritable estate, must be borne by the heir, and "debts not so secured by the executors."

When there are such differences and distinctions in the descent of landed property, not only in the same kingdom, but also frequently in one parish, in one estate, or even in one field, does it not seem most desirable in these enlightened days to have one uniform rule for all property, and to apply that same common sense to land which we do to everything else.

Is it right then for the legislature to refuse this measure just in itself, because it might have the effect of increasing the number of proprietors, and because it dreads such an increase? Under the present system, from want of work where work is most required, from idleness where industry is most required, we find crime and misery abounding and the land absorbed by great estates. The

commonest observer can see that the land cries out for labour, and the labourer for work, and might be provoked to exclaim, "I went by the field of the slothful, and by the vineyard of the man void of understanding: and lo it was all grown over with thorns, and nettles had covered the face thereof."

It stands to reason that without industry we cannot have a virtuous population. Industry, in the language of Barrow, is a fence to innocence and virtue; a bar to all kinds of sin and vice, guarding the avenues of our heart, keeping off the occasions and temptations to vicious practices. Whatever in common life is stately, or comely, or useful, industry hath contrived it, industry hath composed and framed it. Of "virtue," he says, "it is the noblest endowment and richest possession whereof man is capable; the glory of our nature, the beauty of our soul, the goodliest ornament and firmest support of our life; that also is the fruit and blessing of industry." Are we wise then to go out of our way to keep down such a fence and thereby to shut out industry, and consequently virtue from the bulk of our population.

I have most unwillingly been forced into these arguments, and to make comparisons between this and other countries, by the opponents of the measure, who assume that great properties are essential to the well-being of a people, and that any measure which might tend to diminish them, would be fatal. I repeat again, I do not believe for a

moment, that the simple and just measure I proposed will make any change worth thinking of with regard to land, but when its justice is totally disregarded, for no other reason than that its consequences are dreaded, I feel bound to go more fully into the question. I trust I have shown that there is not in this country, the least necessity for the law to encourage the accumulation of land in few hands; and if this Bill passes, it will not cause a much greater subdivision of the soil than we now have, and even if it did, from the authorities I have quoted I have shown no evil could result from it, but on the contrary much good.

The greatest enemy, after all, the supporters of this Bill have to contend with, is ignorance; an ignorance among all classes, on the most simple points of law, more particularly on those points which relate to the technical and peculiarly English distinction between real and personal property. It is this ignorance, which makes even intellectual persons satisfied with the present state of things, and contented also to be overcome by legal difficulties. The law is so involved in technical jargon, that scarcely any one, without something of a legal education, attempts to understand its most simple parts. It is taken for granted, the law is not adapted for the comprehension of the unprofessional mind. This measure would, at all events, break through one of the most absurd and unjust of legal subtleties.

Let those who regretted the loss of this Bill, bear in mind that an alliance was formed in order to reject it, between the Government and the Tories, who exerted themselves vigorously, and that in spite of those exertions, without any on my part, no less than 82 voted in the minority, and there were also many supporters of the Bill absent. I would remind those who rejoice in the defeat, that they have seen smaller minorities, in a just cause more than once backed by public opinion, become overwhelming majorities. I feel confident that such will be the case in this instance, and I shall persevere every year until I obtain the object I have in view. Meanwhile, let those who oppose me now, and who with me dread dangers and violent revolutions, not forget that the surest way of avoiding such catastrophes, is to accede to reasonable and just reforms, before they are demanded as a right; let them remember that all violent changes may be traced to the voice of the people not having been able to produce its effect in improving those laws which are unjust. They ought to bear in mind, that as we live in democratic times we must progress, and that the safest way of making progress is by encouraging virtue and industry among the people, and by proclaiming equal and just laws for all classes without distinction.

I am quite content to let this great measure rest on its own peculiar merit, and rely on its justice alone. I have shewn many arguments of ex-

pediency why it should pass. I have felt it necessary to make use of these arguments, because my opponents resorted to expediency in order to shew why it should not pass. Of this I am sure, that an Act so perfectly just cannot much longer be refused, if constantly brought under the attention of the legislature. I would ask those who refuse this measure of justice, or who are beginning to doubt, to profit by the eloquent address of Bossuet, when he exclaims:

"Justice and equity, O men, are always in your "mouth; in your business, in your meetings, in "your conversation, this sacred word is frequently "reiterated, and if your interests be injured never "so little, you immediately call justice to your aid. "If there be then sincerity and good faith in your "professions, if you indeed look upon justice as the "sacred asylum of human life, if you believe that "you ought, when you are wronged, to have "recourse to this the common refuge for right "and innocence, judge then your own selves with "equity, and do not allow yourselves to be blinded "by your interest. Confine yourselves within "such bounds as are assigned to you, and beware "of doing to others what you would not like to "be done to yourself. For can there be anything "more flagrantly iniquitous in us as Christians than "to raise a cry against injustice, and to call every law "we possibly can to our assistance if we are ever so "slightly touched, when at the same time we do

"not scruple to encroach boldly on the rights of "others. As if the laws we appeal to were only of "use to protect ourselves, and not to instruct us in "our obligations to others, and as if justice had "been given us only as a rampart to defend "ourselves, and not as a limit to confine us to our "reciprocal duties."

As there are many points left untouched in the foregoing remarks, on which I dwelt when I obtained leave to bring in the Bill, I append my speech on the 14th of February, 1854.

MR. SPEAKER,

WHEN I last brought this subject under the consideration of the House, I brought it forward in the shape of a resolution. I was then told by many of my friends who took a great interest in this question, that I should have done better had I moved for leave to bring in a Bill, because it would have shewn that I was in earnest. As I really am in earnest, I now move for leave to bring in a Bill to amend the Law of Succession to Real Estate in cases of Intestacy.

The subject is one of vast importance to a large portion of the people of this country, more particularly the middle classes, for when once the right to property and the security of it have been established, there can be no system of laws of much greater interest than those which relate to the alienation of it and to the succession to it at the death of the possessor.

Laws of this kind have a great social, a great moral and a great political weight. They influence most powerfully the whole feelings of a nation as well as the most intimate relations in the family, and thus directly and indirectly affect the general welfare and the domestic happiness of the nation. In proportion as the principles of just and equal laws have been established in a nation, its general wealth and happiness have been promoted, while by disregarding these great principles, although wealth and power may be concentrated in a few hands, yet misery and poverty become the lot of the many.

Happily in this country we have the greatest security for property, nowhere is the right to it more respected. We have no doubt also the greatest wealth that any nation ever boasted of—but side by side with this enormous,

this concentrated wealth, we have the saddest and the most helpless pauperism that perhaps the world ever exhibited. If the greatest inequalities in wealth and extremes in conditions could be shewn to be desirable, we can at all events in that respect shew ourselves to have been successful in an eminent degree. We have retained a series of laws which profess to keep up inequalities. Whose avowed object is to keep land in the fewest hands, to make the alienation as well as the circulation of it, as difficult as possible, and to discourage the distribution of it at the death of the possessor—as if the natural differences and distinctions between landed and other property were not in themselves sufficient, the law as it now stands makes other and artificial ones. This was originally done with the view of locking up the land in the hands of a privileged class, and to enable a body of conquerors the more completely to subjugate a once independent but a conquered people.

I do not deny that these laws as they now stand are entirely in accordance with the feelings of a great, of a powerful and a privileged class, but the question for the House to consider is, whether they are in accordance with the feelings of an equally powerful, intelligent, and wealthy, though not a privileged class; above all, whether they are in accordance with the times in which we live, whether they are not upheld by prejudice and mistaken ideas of expediency rather than supported by justice.

It is now more than ever incumbent upon those who possess rights which are founded upon antiquity rather than upon justice, to make their position as safe as possible; it is good policy to give up all that cannot be kept with safety, and to make their position as little obnoxious as possible. It is the clear interest of all and every class to resign promptly and with good grace every indefensible

position and every anomaly which is in any way oppressive or unjust.

The law as it now stands does make a very serious distinction and a very great anomaly between the real and the personal property of those who die intestate. For instance, where a parent, the possessor of personal property dies intestate, statute law forces a division among all the children, and this seems to be but an act of natural justice. But if a parent dies possessed of real property intestate, common law snatches away the whole of the estate from as it were the natural inheritors, from those who are left in their saddest moments unprotected, whose protection ought to be the law and justice, and gives the whole of it to the eldest. But with regard to land itself, the law is full of the greatest anomalies. Take the case of two brothers who marry and have children, one invests his fortune in freehold lands, and dies intestate, his land descends to his eldest son; the other invests his fortune in long leaseholds, to all intents and purposes practically as good as a freehold, he dies intestate, his property being personal, is divided equally among his children; another parent invests his fortune in copyhold land, subject to fine by death or alienation, and where borough English prevails, the eldest son gets nothing, and it descends to the youngest. Again, take the case where the holder of personal property agrees to invest the whole of his property in a freehold estate. He signs the contract, he intends when he has completed the purchase to make a will, but dying before he has done so, what happens? The administrator is bound to disregard the intentions of the deceased, he is called upon to complete the purchase, and the whole of the property descends to the eldest son. How can it be possible to have greater anomalies and

greater acts of injustice done by the law in a free country, and yet this is the state of the law here. The Bill which I now ask leave to bring in, would to a great extent remove all these anomalies, and many others, for it would place all the property of intestates upon a plain footing, and distribute it as if it were all personalty.

It is, after all, the province and duty of society, and of the law to make for those who die intestate, such a disposition of their property as upon the whole is just to the family, and beneficial to the nation. Suppose for a moment that the statutory power of making a will were repealed, and that all the property now disposed of by will were disposed of by the law, could such a law exist for a single year?

I wish it to be distinctly understood I am not asking the House to interfere in any way with any man's right or property, I am only asking you when a person dies intestate to apply the same law to his real estate as you now do to his personal property. I am not asking for any compulsory power whatever, I mention this distinctly, because there are many persons who object to this measure on the ground that it has a tendency to abolish the law of primogeniture; now I must confess I do not know of the existence of such a law, there is no law to compel a man to give the whole of his property either landed or personal to his eldest son. I do not propose to interfere with any man's privilege in any way. Every man may by his will make his own law of primogeniture for himself. There are some who consider the aristocracy may be in danger by such a measure, on the ground of its tendency to distribute among the sons of Peers, property which in their opinion, would be better in the hands of only one. But the estates of Peers are generally so settled and encumbered that it matters very little in the majority of cases

whether they make a will or not. Any serious objection might be met by excepting the sons of Peers from the operation of this Bill. It is hardly necessary to talk of this, for there are already many Peers who have no land at all.

In asking for so simple an act of justice, I hope I shall not be met by that horrible doctrine of expediency, the ruin of so many, and always used if possible when everything else fails, to undermine the justice of a case. But I feel that I too can shew it is not only expedient to make the change, but it is just and right. I can shew you that this sort of expediency has created your pauperism, and beg you to take care lest in upholding the present system for the sake of an aristocracy, you find it left powerless, without even wealth, and only its pride left. What I boldly assert, is that the law ought to treat all with equal justice, that where the parent makes no will, where he has not made any distinctions between brothers and sisters in the same family, it is an act of the grossest injustice for the law to step in and say, all of you except one are to have nothing, and that one is to have everything. And why, because perhaps the parent had some natural shrinking from making a will, not uncommon to some persons, or for some other reasons had neglected to make it, in order to undo the intended injustice of the law. As to expediency, if it was expedient at one time for a body of savage conquerors in order to retain in their hands the whole territory, and to place it in the fewest possible hands, is it expedient now ? the argument of security, the only argument then advanced, is at an end ; for as Adam Smith says,

" When land like moveables is considered as the means " only of subsistence and enjoyment, the natural law of

"succession divides it, like them, among all the children "of the family; of all of whom, the subsistence and "enjoyment may be supposed equally dear to the father. "But when land was considered the means not of sub- "sistence merely, but of power and protection, it was "thought better that it should descend undivided to one. "In those disorderly times, every great landlord was a "sort of petty prince.

"Laws frequently continue in force long after the cir- "cumstances which first gave occasion to them, and which "could alone render them reasonable, are no more. In "the present state of Europe, the proprietor of a single "acre of land is as perfectly secure of his possession, as "the proprietor of 100,000."

But when we consider the altered circumstances of the nation, the progress we have made, the democratic tendency of our institutions, is it wise, prudent or safe in a democratic age and country to continue such artificial differences with regard to property as tend to create enormous wealth and helpless indigence in one and the very same family? Why, even in some parts of feudal France before the first great revolution, local usage imposed on the eldest son the duty of giving some small pittance to each of his brothers and sisters, for although, as a modern writer has observed, all younger brothers and all sisters were looked upon as little better than bastards, still a blood relationship was admitted—but according to the common law of England, the eldest son who perhaps inherits half a county with £50 or £100,000 a year, may suffer his younger brothers to starve. Even now there is a strong feeling in the upper classes that when a parent has by his will left any portion of his land to any other than the eldest son, that he has made an unjust will. It is not enough in the eyes of such

persons that the law allows the parent to make a will, even an unnatural will, but lest he should not have done so, the legislature is to step in and make an unjust one for him. What a contrast to this feeling is that which actually did take place in the family of the Baron Dupin ;* whose eldest brother, at a time when it was proposed to alter the law, after telling his younger brothers they were all brought up equal, says, "I only perceived I was your elder brother because I was first able to love you . . . I abjure beforehand under the seal of honour all inequalities that any law whatever may endeavour to establish between us."

On a question of this vast importance so interesting at all times and in all ages, it is well to look back and see what has been the law in different ages and countries, and what have been the effects of those laws.

* Le génie de la rétrogradation voulait frapper à la fois tous les puînés de la France ; il s'indignait que l'égalité régnât dans les petites ainsi que dans les grandes fortunes. Il voulait fonder le privilége à l'aide de la loi, pour rendre, s'il était possible, vénérable l'iniquité; il voulait que la loi même stipulât pour un droit d'aînesse, *afin d'anéantir par degrés la petite propriété.* Laissons parler à cet égard un aîne formé par les conseils que nous venons de rapporter.

M. A. Dupin, à ses frères.

Mes amis, nous sommes trois et je suis votre aîné : nos parents n'ont eu à déplorer la perte d'aucun de leurs énfants ; nous leur devons la vie, la santé, l'éducation. Notre mère ne nous a point confiés à des mercenaires ; elle nous a tous trois nourris de son lait. Notre vertueux père nous a imbus de ses principes ; il nous a élevés dans sa religion, dans le respect de l'ordre, de la justice et des lois, dans l'amour sacré de la patrie, qu'il ne sépare point de l'attachement et de la fidélité au prince. Il n'a permis à d'autres maîtres de nous apprendre que ce qu'il n'a pu nous enseigner lui même. Nos parents n'ont jamais pu remarquer qui de nous les respectait le plus, et jamais ils ne nous ont laissé deviner s'ils avaient pour l'un de leurs fils une prédilection qui ne fût point égale pour les deux autres. Je ne me suis aperçu que j'étais votre aîné, que parce que j'ai pu vous aimer le premier ; nous avons grandi ensemble dans le même amour du travail et de la gloire, dans le même désir d'être utiles à nos concitoyens et à notre patrie. Un patrimoine, d'ailleurs modique, mais pur de tout accroissement illicite, ne nous divisera jamais. J'abjure d'avance, et sous le sceau de l'honneur, toute inégalité qu'une loi quelconque viendrait établir entre nous. En la combattant, j'aurai tout à la fois satisfait à mon devoir comme frère et comme citoyen. A vous pour la vie, Dupin aîné.

First and foremost under the Jewish law and the institutions of Moses, the eldest son did not inherit the whole or anything approaching to it—the whole property was allotted in shares according to the number of children, and while the parent could allot these as he chose, the eldest son had a right to two shares, to a double portion, and this was called the right of the firstborn. But even there the institution of the sabbatical year, when all debts were cancelled, the year of jubilee, when on whatever conditions the land had been sold, it reverted to the former owner, as well as the laws against usury, all tended to prevent the too great accumulation of riches and inequalities, and kept up moderation and equality among them, the best guard of their liberties and their virtues. I mention this, because there are many persons who imagine we take our law from that of the Jews; no difference was made with them between personal property and land. If we next turn to the Greeks, the laws of Athens made for a free people, according to Sir William Jones, we find the power of alienation by sale was absolute in the inheritor, a power perhaps unknown to most of our great landed proprietors in this country. On the death of the parent, all the sons were co-heirs of the estate.

Blackstone speaks in praise of the ancient law of the Athenians as "keeping up equality, and preventing the accumulation of estates."

"But when Solon made a slight alteration by permiting them (though only on failure of issue) to dispose of their lands by testament, and devise away estates from the collateral heir, this soon produced an excess of wealth in some and poverty in others—which by a natural progression first produced popular tumults and dissensions;

and these at length ended in tyranny and the utter extinction of liberty—which was quickly followed by a total subversion of their state and nation."

He states that it was the want of equality, excess of wealth in some and poverty in others which caused the fall of the nation, it was not the division of land, but the concentration of fortunes. He then says, speaking of

"The too great accumulation of property which is the natural consequence of our doctrine of succession by primogeniture to which the Athenians were strangers. Of this accumulation the ill effects were severely felt even in feudal times; but it should always be strongly discouraged in a commercial country, whose welfare depends on the number of moderate fortunes engaged in the extension of trade."

The Roman law was made after the model of the Greek laws, and it is well said by Sir James Mackintosh—"The nineteenth century has, at length, brought us nearly to the same period which the Romans reached at the time of Justinian. Our materials are ample, and our skill in reducing them to simplicity and order, ought not to yield to any former age."

I am not asking you to adopt anything that is new. I am only asking you to carry out the principles of the Roman law; we have already adopted that law in respect of personal property, I only ask you to extend it to real property.

Rome had the same evils which called for redress at Athens, and which perhaps exist even here; previous to her adopting the principle of the laws of Solon, there was a contest between her aristocratic and democratic branches, between her poverty and her wealth.

The father there had full power of disposing of his property in any way he thought proper; but on the death of

an intestate, the sons and daughters and widow shared in even and equal portions.

Our Saxon forefathers, to whom we are indebted for so much that is valuable, made no distinction between the eldest son and his other brothers.

To the Jews, the Greeks, the Romans, and Saxons, anything so unnatural and cruel as the feudal laws was unknown.

How then came this comparatively modern and unjust law to be introduced, and how has it been maintained so long a period? There is no doubt it was introduced to enable this nation to be the more effectually subjugated; the land was not only taken from the unfortunate Saxons, but they were not permitted to have any portion of it, assigned to them. Blackstone says, "The nation at this period seems to have groaned under as absolute a slavery as it was in the power of a warlike, an ambitious, and politic prince to create." Why any portion of these laws has been retained, I must leave others to answer. I can shew why everything that savours of feudality should be abolished, however necessary it may then have been to oppress a conquered people; it ill becomes us, the legislators of this great nation, to treat it any longer as if we were the conquerors, and it the conquered. The time has come when, after having been the slaves of these feudal laws for so long a period, we should now become the judges of them, and submit them to the light of reason and of justice. As long as there is any remnant of those dark ages left, there will always be what Sir William Jones called, a jarring principle in our Constitution, when he said:—"There has been a continued war in the "Constitution of England between two jarring prin-"ciples; the evil principle of the feudal system with his "dark auxiliaries, ignorance and false philosophy, and the "good principle of increasing commerce, with her liberal

"allies, true learning and sound reason. The first is the "poisoned source of all the abominations which history "too faithfully records; it has blemished and polluted "wherever it has touched the fair form of our Consti- "tution, and for ages even contaminated the spirit. "While any dregs of this baneful system remain, you can- "not justly boast of general freedom; it was a system of "niggardly and partial freedom, enjoyed by great Barons "only, and many-acred men, who were perpetually insulting "and giving check to the king, while they racked and "harrowed the people. . . . What caused the absurd "yet fatal distinction between property personal and "real? The feudal principle. . . . The same in- "fernal principle, which then subdued and stifled the "genuine equalizing spirit of our Constitution."

We have too many of these jarring principles and questionable rights still left; we have still lords of manors with their oppressive and injurious rights; we have instead of a forest law, a game law; we have still tedious, expensive, and complicated processes as to personal property, passing through the ecclesiastical courts. Entails again, which though nominally not perpetual, are practically as bad as if they were; estates are locked up and continue to be in the hands of persons devoid both of the knowledge, the inclination, or the capital necessary to improve them. The father also is, by them, subjected to the son, rather than as it ought to be, the son to the father. The living generation as if it had not caprices enough of its own, is bound by those of the past, for the sake of an unborn, an unseen offspring. It was not to be wondered that a state of society which sanctioned so many unjust and cruel laws,

* Wager of battle was another worthy companion of these laws arising out of the state of society in the feudal age, and preserved by us till it was actually claimed in our own times in the case of Ashford *v.* Thornton, when an Act of Parliament removed it.

should also have sanctioned the gross injustice of freeing the heir from all liability to pay his father's simple contract, but even this immunity continued to have the force of the law even down to our own times. Of the cruelties and miseries of those times, arising from the monopoly of land, history is full—whole tracts of country were depopulated and laid waste, for royal forests and for royal amusement. A zone of desolation at one time was thought necessary for the protection of the monopolizers of the land from the northern tribes, and to effect this, the whole of the country between York and Durham was laid waste, and 100,000 people not enemies, but subjects, were slain. After the Reformation, the monopoly of land was greater still; the land had belonged till then entirely to the nobility and clergy, when in order to gain over the nobility, the land which was taken from the clergy, was given to the nobles who already had too much—the result was the greatest misery. It was not to be wondered at, that out of this system grew the Poor Law.

Not many years ago a vast number of people were ejected from a county in the north of Scotland, in order to make room for sheep. I am now told the sheep are about to be removed, in order again to make place for a population about to be re-introduced. The same thing has taken place in Ireland, where the monopoly of land has ravaged that island. We have there the smallest number of landed proprietors of any country in Europe; we have seen the yeomanry gradually decreasing, and until lately, until the adoption of free trade, an increasing amount of pauperism. Now I am not here to advocate any violent change, nor will I detain the House by giving them statistics, but if we take the agricultural counties of England where large estates abound, and compare them with manufacturing or commercial counties, we find in them more pauperism,

more crime, more ignorance, and even more insanity. These facts are most ably gone into by Mr. Pashley, who states them not as matters of opinion, but of fact.

It is a remarkable fact with regard to insanity, that in the agricultural districts of England there is not only more insanity than in the towns, where naturally insanity would increase to a greater extent than in the country, but there is more even than in the agricultural districts of other countries. In the agricultural districts of England, one out of every 700 inhabitants was insane, whereas in the agricultural districts of France, there was not above one in every 3000.

The natural desire for land, then, is quite strong enough without laws being made to increase it—and when I look at what has been done in late years—when I recollect that the zeal, the eloquence, and the honesty of purpose of the Chancellor of the Exchequer have induced the House with scarcely a murmur to give up one of the greatest privileges which the landed interest enjoyed, its freedom and immunity from the legacy tax; when I remember that the same right honourable gentleman has boldly declared the principle that henceforth all claims should be treated with equal justice, I feel, that the Government, at all events, can not oppose a measure of this kind, for I am not asking the House to impose any new tax, but simply to do away with an unjust privilege, and to resolve that real property should be dealt with, in the same manner as personal property. It is more than 300 years, since any great alteration has been made with regard to the descent of landed property; a great mitigation was then effected in those unjust and cruel laws, by the statute which gave the power of making a will. It is now time to do a little more, and in the middle of the nineteenth century, you should at all events

for the man who dies intestate, make a more just will than that which was dictated by the spirit of the eleventh, and which we still retain. I trust that there will be no objection to my laying the Bill on the table, as I believe the effect of passing it will be to remove an act of injustice which is a dishonour to the Legislature, and a disgrace to a free and civilized country.

Leave was then given to bring in the following Bill.

A Bill to amend the law of Succession to Real Estate.

WHEREAS it is expedient that the Law of Succession to Real Estate in Cases of Persons hereafter dying intestate should be the same as the Law of Succession to Personal Estate in the like cases: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, that the Court entitled to grant Administration of the Goods and Chattels of any Person who shall hereafter die intestate shall be authorized and required to include in such Grant of Administration all Lands, Tenements, and Hereditaments, whether Freehold, Copyhold, or of any other Tenure or Kind, whereof the Intestate shall have died seised or possessed, or whereunto or wherein he shall have been in any way entitled or interested, all which Lands, Tenements, and Hereditaments, Title and Interest, shall thereupon vest in such Administrator as from the Death of such Intestate, as fully as the same were respectively vested in such Intestate; and such Administrator shall be authorized and required (after all Debts, Funeral and just Expenses of every sort, first allowed and deducted), to distribute the whole of such Lands, Tenements, and Hereditaments, or the Proceeds of the Sale thereof or of any Part thereof, and of all Title and Interest of the Intestate to and in such Lands, Tenements, and Hereditaments, to such and the

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same Persons and in the like Proportion and Manner as such Administrator is now by Law required to distribute the Personal Estate of such Intestate.

I must be permitted to state that in consequence of the rejection of this Bill on the second reading, I immediately gave notice of another Bill relating to the charges on real estate. Under the then law, the heir or the devisee to a freehold estate could claim payment of the mortgage on such estate, out of the personal property of the deceased owner. A great many cruel cases of hardship constantly arose from this state of the law, particularly where the whole of the personalty was absorbed in paying the mortgage, and the rest of the family in consequence left destitute. Money was also frequently raised upon mortgage, for the purpose of improving an estate, and the value of it, in consequence of judicious improvements, was increased much beyond the actual outlay expended upon it. The heir in such cases not only took the estate free of any mortgage debt, but also to the injury of the rest of the family, reaped the advantage of all the improvements.

I proposed that where no contrary intentions have been expressed by will or otherwise, the estate should descend with whatever burthen has been imposed upon it; in other words, that it should bear its own burthen. This is only carrying out the principle laid down by Sir Samuel Romilly, when he proposed that a man's freehold estate should be liable for his simple contract debts.

I proposed also that the estate of the heir or devisee should be primarily liable for the payment of a mortgage debt, which had been raised on his estate, and that neither of them, unless a contrary intention had been expressed, should be able to claim the payment of it out of the personalty. There was another clause in the Bill, which provided that where any person had directed his real estate to be sold and converted into personalty, for the purposes of his will, the residue of such personalty should in future descend as personalty, and not as it now does, to the heir as realty.

This I feel to be only common sense and justice, carrying out the view of the testator, by treating his estate as what it is, and not as what it is not. It is converted into money by his direction, why treat it any longer as land which it is not?

I obtained leave to bring in a Bill to Amend certain Rules of Law and Equity relating to the Administration of deceased Persons on the 6th of April.

After having encountered some opposition, this Bill passed through its different stages in the House. I am happy to say that the Government did not oppose it as they had done the former Bill. It would, however, have given me much satisfaction, and have saved me much trouble, if they had assisted me in passing it through the Commons. Few men, unless they have had experience, can believe the incessant trouble, attention and time, an independent member must give, in order to get

a Bill passed through its different stages. If he gets leave to bring in the Bill, he has then to make arrangements, and ascertain when he can have a chance of bringing it on for the second reading; it is then again liable to be opposed, the debate adjourned, or finally to be rejected. The next step is in committee; there it is again liable to opposition. Next comes the report, and lastly the third reading. Even then the fortunate member cannot exclaim, "Post tot naufragia tutus;" for his Bill must then go to another place. He is again singularly fortunate if he can prevail on a Peer to take charge of it; if he does not, his trouble and anxieties have been of no use, his labour has been in vain. I know an instance where an excellent Bill was dropped, because no Peer took charge of it. When I moved the second reading of this Bill, I explained the subject somewhat fully, and as many are not aware of what the law was or what it is now, or of the reasons for altering the law, I here add my speech.

On moving the second reading of the Real Estate Charges Bill, I spoke as follows:—

"Mr. Speaker—As I find that so very little is known as to what the object of this Bill is, and what are the peculiar hardships which are caused by the present state of the law, I feel it necessary to say a few words on moving the second reading of this Bill.

"I regret extremely that so much of the law, the common law especially, which relates to landed property, has been allowed to remain for so long a time involved in technical jargon, that scarcely any one has that knowledge of a law

which ought to be so simple in a free country as to be easily understood by all. There is a general feeling that none but professional men can understand the subtleties of the law relating to landed property, subtleties so great, so cunningly devised, that even they themselves frequently do not understand them. And while it is felt that none but these professional gentlemen ought to attempt to reform or to simplify the laws, they have at all times shewn the greatest disinclination to do so, and in consequence the public have for ages greatly suffered, and still continue to be oppressed.

"Now, with regard to this particular Bill, I must explain that under the present state of the law, the heir or devisee to a real estate which has been mortgaged by the late owner has the right to claim the payment of that mortgage debt, and in practice does always claim the payment of it out of the personal estate of the deceased owner. Now, out of this state of the law very cruel hardships arise, for it constantly happens that the whole of the personal estate is entirely swept away from the numerous claimants, not only upon the affection, but upon the justice also of the deceased owner, in order to swell the already disproportionate share of a single heir or devisee. Now, the mere fact of a man mortgaging an estate, at once shews an intention on his part that the money so raised, that that portion now become personalty, should be set aside for a particular purpose, or employed in some particular manner. If at the time he mortgaged the real estate, he had personalty, then it may be inferred he wished to increase his personalty, or he may have borrowed the money to purchase an adjoining estate; but, be the purpose what it may, I do not see how it can be said that the estate should not be primarily liable for the onus he put upon it, that the mortgage debt ought to be paid without his directions

out of that very property he had set aside for other purposes. Or again, in the event of his having no personal property at the time he raised the money upon mortgage, this at once shews an intention on his part to create a personal estate out of a real estate. How can it be argued in such a case that he could wish the heir or devisee to be indulged to the prejudice of all other claimants, and that that very personalty which he had created out of his real estate, and which he had set aside for other purposes, should be seized upon.

"Why should not the estate descend with the debt which the last owner imposed upon it, and subject to which he enjoyed it? Why should not the industry and talents of the heir and devisee be called forth to pay off that debt rather than the personal estate, the only hope of the poor and helpless children of the late owner?

"It by no means unfrequently happens that the whole of the sum which has been raised upon mortgage has been expended in buildings, or in improvements upon the estate, whose value, from a judicious outlay, has been increased far beyond the sum which has been laid out. Yet the heir, under the present law, has the right, and exercises it most unsparingly, of taking the estate, with all the improvements which have been made upon it, and of claiming in addition a sum equal to the outlay upon it, in order to pay off the mortgage.

"Can it for a moment be imagined that any person wishes to bring want and penury upon his own family in order that the heir should take the estate free of all the charges, charges which he himself had imposed upon it, and subject to which he himself had held it?

"Surely, in such a case the favour of the law, or the special bounty of the testator have already distinguished the heir above all others, and done sufficient for him without this most cruel rule annihilating the only property by

which the rest of the family could be saved from destitution.

" Then again, it is said that the person allowed his property thus to descend, knowing the law, and could have averted its operation. This is not however true, for ignorance is so common on all those points which relate to the peculiarly English and technical distinctions which exist between real and personal property, that the generality of persons know nothing about the law. Many persons are so ignorant, and so innocent, as to imagine there is reason and common sense in the law, and that if they make a particular estate answerable for a particular sum of money, that estate will be, and will remain so; whereas the reverse is the case, and the personal estate is actually primarily liable.

" Persons who have had transactions in other property naturally imagine that reason and justice are applied to the soil, and do not look upon it, as it is absolutely necessary they should, in consequence of the present state of the law, through lawyer's spectacles, and deal with real property as it were with the right hand, and personal with the left. When any body looks seriously at the effects naturally produced by a mortgage, he must look upon it as a valid subtraction of so much from the actual value of the estate. There are innumerable hardships which arise out of the present state of the law. A friend of mine, only the other day, told me of a case which came under his notice—' a gentleman left by will what he considered to be the bulk of his property, his personal estate, to his wife; he possessed also some real estate, heavily mortgaged, which he left to his nephew. A compromise was made, as the nephew was an honourable man, or all the property would have gone to him, and the poor wife would have been left destitute.'

"Here is another instance of hardship brought under my notice:

"'J. P. purchased a freehold public house and some cottages adjoining, for £1500, and borrowed on mortgage £800. He carried on the business of a publican in the house to the time of his death, which was very sudden; and he died intestate, leaving a son twenty-two years of age, and six younger children. The said son took out letters of administration, sold all the personal property of which his father died possessed, and after paying the few debts which the deceased owed on simple contract, appropriated the remaining part of the proceeds to pay off the mortgage on the freehold estate, of which he took possession as heir at law. His brothers and sisters were thus left entirely destitute, and were obliged to have recourse to the parish, which is trying on their behalf (but it is feared without any prospect of success) to obtain from him as a matter of bounty, a small part of what a just law would have given them as a matter of right.'

"If the last owner die intestate or has not expressed his intention that the mortgage debt should be a primary charge on the estate, so as to avoid the trapfalls of conflicting decisions, the law does for him what in ninety-nine cases out of 100 he never would have done for himself. What words are sufficient to shew an intention of exempting the personal estate, is generally a most painful investigation. Lord Eldon said, 'On a comparison of all the cases which have arisen, it is scarcely possible to find any two in which the Court agrees with itself.'

"A considerable amount of technical learning is wasted in determining whether the debt is the ancestor's proper debt or the devisee's own proper debt. The mortgage money, if it is not the last owner's own proper debt, remains on the estate.

" In the case of Barham *v.* Lord Thanet, A mortgages a manor to secure £80,000, and dies intestate. B, the heir, is pressed to pay off £30,000, and joins the mortgagee in conveying the manor to C, who advances the £30,000 on mortgage. It was declared that B thereby made the debt of £30,000 his own personal debt. A debt contracted by another—and when, perhaps, B never possessed personal property of a tythe of that value.

" All that I propose doing is to let the mortgage remain chargeable on the estate, and prevent the heir or devisee claiming payment out of the personal assets unless the last owner has desired a contrary intention. This would only carry out the great principle laid down by Sir S. Romilly, when he made freehold estates assets for the payment of debts. I propose to make the freehold estate liable primarily for the payment of the mortgage.

" The second clause is simply this, that when a testator has directed his real estate to be converted into personalty, and it is thus converted, that it should be treated as personalty and not as realty. No one, unless he is a lawyer, can have the remotest notion that the law will ever treat it as realty, when it is actually converted into personalty, and yet the law does—this rule of law was laid down in 1780, in the memorable case Ackroyd *v.* Smithson, in consequence of the talents and arguments of Lord Eldon, then Mr. Scott, and has been the law ever since. In White and Tudor's leading cases in equity, 1780, I read as follows:

" ' Since the case of Ackroyd *v.* Smithson, so celebrated for the elaborate argument of Lord Eldon, then Mr. Scott, it has never been doubted, that, where a testator directs real estate to be sold, and the produce of the sale to be applied for a purpose which either wholly or partially fails, the undisposed of beneficial interest will result to his heir at law, and will not go to his next of kin, although the land may have been converted into money.

"'Upon the same principle, where a partial disposition only is originally made of the money to arise from the sale of land, the portion undisposed of will result to the heir at law.'

"I trust that there can, after what I have said, be no objection to this Bill being read a second time, and thus by a small and simple measure, remove a great and crying injustice."

This Bill having at last found its way to the House of Lords, was most kindly and immediately taken charge of, by Lord Fortescue. Had it not been for his exertions, and for the powerful assistance of the Lord Chancellor and the members of the Government in the House of Lords, the law would have remained as it was. The public have on several occasions, had reason to be grateful to this distinguished nobleman, Lord Fortescue, for the good services he has rendered them. On this occasion the moment I asked him to take charge of this Bill he at once acceded. He was most indefatigable, and although out of health at the time, he as it were forgot his illness, in order that he might be the means of obtaining this act of justice.

I shall not, I hope, be accused of partiality in thus publicly acknowledging my thanks to him, with feelings of pride at being able to boast of having such a true and tried patriot for my relation.

I regret to say that the second clause of the Bill was given up, because it would have endangered the whole Bill. It proposed only to treat the

residue arising from the sale of a real estate directed by the testator to be sold for particular purposes as personalty and not realty. To treat it simply as what it is, and not as what it is not. This, however, was felt to be too great an encroachment on the right of the eldest son. The Lord Chancellor explained the Bill in a few words, and particularly the second clause, so clearly, that I cannot deny myself the pleasure of here inserting his speech.

The Lord Chancellor said, "The House ought to know exactly what the law was before they came to a vote upon the matter; for he thought that if the law were well understood, there could not be two opinions as to the justice of the measure. Suppose a man inherited an estate from his father that was charged with a mortgage of £10,000, that he also possessed £10,000 in the funds and died intestate, leaving an eldest son and several other children; the law in that case gives the estate to the eldest son, but gives it *cum onere*—that is, subject to the mortgage—and the personalty is divided amongst all the children; but suppose the man had inherited the estate free from any charge, or had purchased it and afterwards mortgaged it, investing the mortgage money in 3 per cents, and then died intestate, any person would say that the same rule would apply; but the law steps in and says the mortgage is a debt, and must be paid out of the personal property to the injury of the younger children. This evil is proposed to be corrected by the first clause. He hoped there would be no opposition to the Bill. He would not consent to anything that would shake the institution of primogeniture; but it seemed to him that the refusal to pass such a measure as that before the House, was the surest means

of bringing that institution into discredit. If they agreed to the first clause they would necessarily agree to the second, which carried out the same principle. It was to this effect—that when a testator directed real estate to be sold for the payment of debts, any surplus remaining after the discharge of the debts should be considered as personal property and not retain the character of real estate, as it did under the present law. The proposal in fact was, that where there was no direction, the property should go, in the manner in which it might fairly be supposed to have been intended."

However strong the prejudices of certain Peers are in favour of the rights of the heir, no matter on what plea those rights are founded, any one would have imagined that after this very simple and clear statement of the Chancellor's, no objection could have been raised to the Bill. Yet in a subsequent stage a very strong muster was made, and in a full House this Bill was carried by a majority of only three.

Unfortunately an alteration was made as to the time when the Act was to come in force, and in consequence a grievous injustice has been perpetrated, which would not have occurred if this Act had come into force at once, instead of waiting until the 31st of December. The following case, which has been referred to by Lord Fortescue in the House of Lords, will at once shew the danger even of delaying a just act for a few days. A clergyman, of good life income, in order to make a provision for his family, insured his life in various offices to a

large amount. Late in life he bought land, and borrowed money by mortgage on the land itself, to pay for it. He was suddenly taken ill, and made a hurried will, and left every thing to his wife (who was younger than himself, and in tolerable health) without any specified alternative in the event of her death. He afterwards to a certain extent recovered his health, but with his mental faculties so much impaired by his disease (confirmed epilepsy) as to become in a short time legally incapable of making a fresh will. Subsequently, his wife was also attacked by a fatal disease. If she died before her husband, his will would be inoperative, and at his death he would be intestate. They had two surviving children, both sons. Under the law as it stood up to the 31st of December, if both died before this Act came into force, the eldest brother, the heir-at-law, would have the right to take not only all the land, but also all the insurances on his father's life, and his other personal property, in order to pay off the mortgages on the land, and thus leave the other son, the only remaining member of the family, without any part of the estate, real or personal. The sad result in this instance proves most clearly the anomalous state of the old law, and the cruelty which has arisen from not allowing the new law to come into force sooner. The closing part of this melancholy tale will shew, how different the result would have been, if the new law had taken effect a few days sooner. The father

died on the 19th of December, and the mother, who was fast sinking, died two days later, on the 21st, but intestate. The eldest son now claims the whole property, real as well as personal.

I hope these most remarkable and distressing coincidences, may be a warning to future legislators not to delay justice, for when they do, invariably oppression begins.

I hope, on a subsequent occasion, to send up the rejected clause in another Bill for reconsideration. This clause, in spite of the arguments of the Chancellor, so full of justice and of common sense, it was necessary to withdraw. I have already shewn it was considered too great an infringement on the rights of the heir, and if persisted in would have endangered the whole Bill. The clause was the following:—

"II. From and after the *passing of this Act*, when any Person shall die seised of or entitled to any Land for an Estate of Inheritance, and shall have by his Will directed the same to be sold for the Payment of his Debts or the Purposes of his Will, then, unless such Person shall by his Will have signified any contrary or other Intention, the Land so demised shall be deemed by a Court of Equity to be converted into Personal Estate, and the whole, or any Portion thereof that may not be required for the Purposes mentioned in the Will, shall be divided under the Statute for the Distribution of the Estates of Intestates."

As many may not have the Acts of Parliament at hand, they will find it convenient to know how the law now stands with regard to mortgages. The following is the new Act:—

An Act to amend the Law relating to the Administration of the Estates of deceased Persons. [11*th August*, 1854.]

WHEREAS it is expedient that the Law whereunder the Real and Personal Assets of deceased Persons are administered should be amended: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. When any Person shall, after the Thirty-first of *December* One thousand eight hundred and fifty-four, die seised of or entitled to any Estate or Interest in any Land or other Hereditaments which shall at the Time of his Death be charged with the Payment of any Sum or Sums of Money by way of Mortgage, and such Person shall not, by his Will or Deed or other Document, have signified any contrary or other Intention, the Heir or Devisee to whom such Land or Hereditaments shall descend or be devised shall not be entitled to have the Mortgage Debt discharged or satisfied out of the Personal Estate or any other Real Estate of such Person, but the Land or Hereditaments so charged shall, as between the different Persons claiming through or under the deceased Person, be primarily liable to the Payment of all Mortgage Debts with which the same shall be charged, every Part thereof, according to its Value, bearing a proportionate Part of the Mortgage Debts charged on the whole thereof: Provided always, that nothing herein contained shall affect or diminish any Right of the Mortgagee on such Lands or Hereditaments to obtain full Payment or Satisfaction of his Mortgage Debt either out of the Personal Estate of the Person so dying as aforesaid or otherwise: Provided also, that nothing herein contained shall affect the Rights of any Person claiming under or by virtue of any Will, Deed, or Document already made or to be made before the First Day of *January* One thousand eight hundred and fifty-five.

II. This Act shall not extend to *Scotland*.

To meet the wishes of many of my friends and others who have been anxious to petition Parliament

for an alteration of the Law of Succession to Real Property, and who only wanted a form of Petition, I here copy a Petition which is now being signed in many localities.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled.

The humble Petition of the undersigned

Humbly sheweth,

That your Petitioners have learnt with much satisfaction that notice hath been given in your honourable House of a motion for leave to bring in a Bill "to amend the Law of Succession to Real Estate."

That the arbitrary distinction in the law between the succession in cases of intestacy to the freehold estate, and that to all other kinds of property, arises out of the principles and necessities of a barbarous age, now frequently causes much suffering and injustice, and has long ago been modified in most civilized countries.

That succession by an eldest son to the whole Freehold estate of his intestate father, to the exclusion of the other children, is in itself unreasonable and unjust, and it becomes manifestly absurd and indefensible, when accompanied as it is in England, by a very different and less revolting distribution of Leasehold, Copyhold, and Personal property in the same case of intestacy.

That it is the duty of the State to provide for cases of intestacy such a law of succession as shall be more conducive to the true interests, progress, and happiness of society than that which at present prevails.

Wherefore your Petitioners humbly pray your honourable House favourably to receive and consider this measure, whenever the same shall be brought before you, and your Petitioners will ever pray, &c.

THE END.